

1 UNITED STATES DISTRICT COURT  
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3 FOR THE DISTRICT OF RHODE ISLAND  
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6 EFRAT UNGAR, et al CA No. 00-105 L  
7

8 v

PROVIDENCE, RI  
12 JULY 2002  
9

10 THE PALESTINIAN  
11 LIBERATION ORGANIZATION  
12 ++++++  
13 BEFORE MAGISTRATE JUDGE DAVID L. MARTIN  
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1 JULY 12, 2002 - MORNING SESSION

2 THE COURT: Good morning. This is the  
3 matter of the estate of Yaron Ungar, et al vs the  
4 Palestinian Authority, et al. This matter is before  
5 the Court this morning on the plaintiff's motion to  
6 enter default judgment against defendant HAMAS and  
7 HAMAS Operatives. The attorneys will identify  
8 themselves.

9 MR. STRACHMAN: David Strachman for the  
10 plaintiffs.

11 MR. SHERMAN: Deming Sherman for the  
12 Palestinian defendants.

13 THE COURT: The first matter the Court will  
14 take up in connection with the present motion is an  
15 objection that was filed by the Palestinian defendants  
16 apparently on July 10th to entry of default judgment in  
17 this matter. Mr. Sherman, are the Palestinian  
18 defendants pressing that objection?

19 MR. SHERMAN: Your Honor, may I make a brief  
20 presentation on that?

21 THE COURT: Yes.

22 MR. SHERMAN: Thank you, your Honor. I  
23 think it will answer your question. As your Honor  
24 indicated, the Palestinian defendants filed an  
25 objection for two reasons. The first was a concern

1 about the impact of this hearing, and a possible  
2 default judgment on our clients. The second -- and  
3 this was prompted by a set of documents that were  
4 served upon us last weekend -- the second is a concern  
5 about the jurisdiction of this Court to enter a default  
6 judgment at all.

7 I don't intend to repeat what was in my memorandum  
8 filed earlier this week. We do understand that the  
9 Court will proceed with the hearing today largely  
10 because the witnesses have traveled great distances.

11 As your Honor indicated in the telephone  
12 conference that we had yesterday with all counsel, it  
13 is the option of the Palestinian defendants not to  
14 participate in the hearing. Accordingly, we do not  
15 intend to participate. However, I wish to state for  
16 the record the position of my clients as follows:

17 Number 1, the default judgment proceedings that  
18 are being conducted today against the HAMAS defendants  
19 should not be in any way binding upon the Palestinian  
20 defendants.

21 2. None of the evidence received, the findings of  
22 fact, the conclusions of law, or orders or judgments,  
23 if any, that may be issued, shall have any impact upon  
24 the Palestinian Authority, the Palestinian Liberation  
25 Organization, or their officers or officials,

1       collectively, the Palestinian defendants, in this case,  
2       or in any other context, and shall not be binding or  
3       have any preclusive effect upon the Palestinian  
4       defendants by way of res judicata, collateral estoppel,  
5       issue preclusion, or any other legal theory.

6       The Palestinian defendants shall not be liable --  
7       it is our position that the Palestinian defendants  
8       shall not be liable directly or indirectly, in whole or  
9       in part, for any judgment that the plaintiffs may  
10      recover against the HAMAS defendants. Any judgment  
11      that the plaintiffs may recover against the HAMAS  
12      defendants shall not be enforceable, or recoverable, or  
13      usable in any way against the Palestinian defendants,  
14      and shall not provide any basis for imposing any  
15      liability or adverse effect upon the Palestinian  
16      defendants, and that is position that we assert this  
17      morning. We suggest that in order to avoid future  
18      contentions of this sort in this litigation that this  
19      position that we have asserted be made clear by order  
20      of this Court. So that is the position that we assert  
21      this morning, your Honor.

22           THE COURT: Well, it doesn't entirely answer  
23       my question. Are you pressing the objection that was  
24       filed?

25           MR. SHERMAN: Yes.

1 THE COURT: You are.

2 MR. SHERMAN: Yes.

1 position. I'm not so sure we have to either agree or  
2 disagree with his position as to the effect of this  
3 hearing right now, and I think what they're basically  
4 saying is that the case should proceed against the  
5 defaulted defendants, and I think they seem to concede  
6 and to recognize that. But at the same time, they  
7 perceive some procedural benefit, or some substantive  
8 benefit, to disallowing the evidence in this  
9 proceeding, to enure against them. I don't know what  
10 the effect of that would be. I don't believe that's  
11 really before the Court today. But I would urge the  
12 Court to consider our motion to sever the case, and I  
13 think that would probably satisfy both parties.

14 THE COURT: All right. Thank you,  
15 Mr. Strachman. You are correct in your observation  
16 that the motion to sever, in fact, as I understand it,  
17 in response to the objection that was filed by the  
18 Palestinian defendants, plaintiffs then filed a motion  
19 for sanctions. One motion was entitled a motion for  
20 sanctions, a motion to strike, alternatively to sever.  
21 I have now been informed that, in fact, after being  
22 advised by, I believe Judge Lagueux's clerk, that such  
23 a motion was not proper, and that 3 separate motions  
24 should be filed, and that plaintiffs have, in fact,  
25 done that. Is that correct, Mr. Strachman?

1 MR. STRACHMAN: Yes, your Honor. Yesterday  
2 afternoon we separated the 3 motions, correct.

10 As I've indicated, the first matter I'm going to  
11 take up is the objection that has been filed by the  
12 Palestinian defendants to the entry of default  
13 judgment, and I'll ask Mr. Sherman to respond to the  
14 arguments that have been raised by plaintiffs, namely  
15 that the Palestinian Authority and the PLO did not  
16 object back after the motion, the present motion was  
17 filed on November 29, 2000, and then on February 5,  
18 2000, the PLO and the Palestinian Authority, in a  
19 written memorandum in support of their renewed motion  
20 for a stay and a motion for leave to seek a protective  
21 order, stated: we take no position on that motion,  
22 meaning the motion for entry of default judgment, which  
23 is before this Court this morning, or whether it should  
24 be subject to a stay. So, Mr. Sherman, I'd like to  
25 hear from you regarding why the Court should at this

1 eleventh hour allow the Palestinian Authority and PLO  
2 defendants to raise an objection to a motion that has  
3 been pending for months.

4 MR. SHERMAN: Yes, your Honor. What the  
5 Court recited, as a procedural and factual matter, is  
6 correct, that the motion was filed in November of 2000,  
7 and the filing that my clients made earlier this year  
8 with the statement that you referred to is, in fact,  
9 what was said. What prompted this, this objection, as  
10 I indicated previously, was the filing of substantial  
11 exhibits over the weekend which we had not seen before,  
12 and we were also unaware that there were a number of  
13 witnesses that were apparently on their way to the  
14 United States for this hearing. I think we perhaps  
15 misjudged as to exactly what was going to transpire.  
16 In any event, as I indicated earlier, what we are  
17 concerned about is what impact this hearing would have  
18 against the non-defaulting defendants that we  
19 represent. I think -- our position is there should be  
20 no -- there should be no impact, but we're not clear.  
21 When we looked at the law on the general procedure with  
22 respect to proceeding for a default judgment against  
23 some but not all of the defendants, it appeared to us  
24 from our research that the general rule is that when  
25 there are non-defaulting defendants and there are

1 defaulting defendants, that you should withhold any  
2 judgment against the defaulting defendants until such  
3 time as the case in chief has been tried. So it was a  
4 combination of those two matters that caused us to file  
5 the objection. I recognize that it was not filed  
6 immediately, and after the motion was filed, and we are  
7 obviously bound by the statement that we made  
8 previously. But I'm explaining to the Court why we did  
9 what we did.

10 THE COURT: Thank you, Mr. Sherman. I don't  
11 need to hear from plaintiffs. The Court is satisfied  
12 that the objection that was filed by the PA and PLO was  
13 not timely and should not be heard by the Court this  
14 morning, and I will not allow the PA and PLO to press  
15 that objection. It was simply untimely, filed at the  
16 11th hour. I'm not persuaded that the concerns that  
17 have been expressed by the PA and PLO through their  
18 counsel this morning were not apparent, or should not  
19 have been perceived far before July 10th. Therefore, I  
20 will not allow the PA or PLO attorney to participate  
21 further in the hearing this morning. So the Court  
22 overrules the objection that's been filed by the PLO  
23 and PA.

24 Mr. Strachman, before we start the hearing,  
25 however, I do have some questions for you. I'd like

1 you to go to the podium, please.

2 MR. STRACHMAN: Yes, your Honor.

3 MR. SHERMAN: Your Honor, may I be excused?

4 THE COURT: You may, Mr. Sherman.

5 MR. SHERMAN: Thank you.

6 THE COURT: Mr. Sherman, you're welcome to  
7 leave. I'm just alerting you to the fact that I'm  
8 about to ask some questions that may sound similar to  
9 some of the questions or statements you just had raised  
10 in your objections. So you may want to stay for  
11 5 minutes just out of interest, but you're welcome to  
12 leave.

13 MR. SHERMAN: I'll stay briefly, Judge.

14 THE COURT: Mr. Strachman, I've made my  
15 ruling that I'm not going to allow the PA and PLO to  
16 participate in this hearing, nor to voice objections to  
17 the proceeding going further. However, the Court does  
18 have some concerns that I want to address with you.

19 Do the plaintiffs contend that the assessment of  
20 damages against the defaulting HAMAS defendants would  
21 be in any way binding on the PA and the PLO?

22 MR. STRACHMAN: I don't know, and we have  
23 not really addressed that issue. I think there is -- I  
24 think there is an issue, as my brother raises it in law  
25 in his motion, but we haven't really addressed that

1 issue. It's the first time it was -- this is the first  
2 time it's been raised.

3 THE COURT: There is apparently a general  
4 rule that when one of several defendants was alleged to  
5 be jointly and liable to defaults, judgment should not  
6 be entered against that defendant until the matter had  
7 been adjudicated with regard to all defendants, or all  
8 defendants had been defaulted, and the reason for this  
9 rule, in the view of the Court, in the case of  
10 Commodities, Futures Trading Commission versus Standard  
11 Forex, Inc., 1997, U.S. District, Lexis 22612, Southern  
12 District of New York 1997, is that while judgment as to  
13 liability may be entered against the defaulting  
14 defendants, the proper procedure is to consolidate the  
15 inquest to determine the level of damages as to the  
16 defaulting defendants with the damages aspect of trial  
17 against the non-defaulting defendants. The rationale  
18 underlying this procedure is the prevention of  
19 inconsistent judgments with respect to the amount of  
20 damages a plaintiff may recover from the defaulting,  
21 non-defaulting defendants.

22 What the Court is interested in knowing is that if  
23 we go forward today, as I have announced we will, and  
24 quite frankly we are going to have testimony, I'm not  
25 going to make a ruling on these issues and not have

1 testimony. The witnesses have traveled too far. But I  
2 do have this concern, and I would be interested in  
3 knowing what the plaintiffs' view is regarding this  
4 concern other courts have expressed about inconsistent  
5 judgments with respect to the amount of damages. Is  
6 that a possibility here?

7 MR. STRACHMAN: Judge, your Honor, I'm not  
8 so sure that's -- it may be a possibility. I'm not so  
9 sure why it should be a concern, respectfully. This  
10 case has a unique history. It's in a context first of  
11 a defendant, the PLO. The last time it was before a  
12 court it took 12 years to judgment, 1985 until 1987,  
13 until the case was resolved. My clients defaulted  
14 HAMAS in September of 2000. It's been 23 months since  
15 the default entered. We've asked the Court on  
16 3 occasions, and obviously Judge Lagueux granted our  
17 request for a hearing. There is no reason that the  
18 plaintiffs should be forestalled against proceeding  
19 against HAMAS because the Palestinian defendants are  
20 going to take another 12 years to resolve the case, and  
21 we fully anticipate that. We've said that. We've  
22 acknowledged that in our briefs. The motions to  
23 dismiss, discovery has been stayed, all kinds of  
24 pretrial issues. So none of those cases that your  
25 Honor recites, or that are recited by my brother in his

1 brief of Wednesday afternoon, have anything to do where  
2 the travel in those cases are so dissimilar to the  
3 issues here as to make that rule inapplicable.

4 Also, Judge, what's crucial about this case is  
5 this case arises under a very specific statute. The  
6 goal of this statute is to create an economic  
7 disincentive to terrorism. If the terrorists, the  
8 actual triggermen, and that's who the HAMAS defendants  
9 are, the triggermen, the Palestinian defendants are  
10 people who consorted with them, who supplied them, who  
11 helped them, et cetera, but it would be an absurdity.  
12 It would create an absolute perversion of the statute  
13 to say that the triggermen have to wait -- the  
14 plaintiffs have to wait 12 years to proceed against the  
15 triggermen who chose not to participate in this  
16 proceeding in any fashion because another defendant has  
17 the right to fully exploit its rights to litigate this  
18 case and to continue on to trial. None of those cases  
19 that were cited involve anywhere near this type of  
20 situation. And I would say it would dramatically  
21 undermine the purpose of Section 2333, the  
22 Anti-terrorism Act of 1990, it would dramatically  
23 undermine -- it would make a mockery of the whole  
24 process. The statute specifically says the terrorists  
25 and the people who aid terrorists, and the legislative

1 history makes very clear as we've cited in our previous  
2 briefs, was well known by Congress that most of the  
3 terrorists were going to kill Americans who live  
4 abroad. Because one of the groups that's involved in  
5 consorting with this terrorist organization happens to  
6 be in the United States, that would mean, and that  
7 would allow a shield for the terrorists 12 years, or 5  
8 years, or 8 years, but certainly not the fast track  
9 that normally occurs in litigation in federal courts,  
10 the normal course of litigation. To allow them to get  
11 the benefit of the fact that there is a local party  
12 here, to me makes a mockery of the whole situation.  
13 Perhaps your Honor could award inconsistent judgments.  
14 I don't know why that's a problem. It's unclear to me  
15 why inconsistent judgments would be a problem, as well.  
16 I mean, it may not be -- it may not appear tidy, but it  
17 certainly would facilitate justice by allowing the  
18 terrorists to -- by allowing the plaintiffs to hold the  
19 terrorists responsible and then proceed, and we fully  
20 intend to proceed, as I've discussed with Mr. Schilling  
21 on several occasions, we fully intend to proceed to  
22 final judgment, obtain an execution, and go after these  
23 terrorists and proceed to help bankrupt them. We made  
24 that representation in a slightly abbreviated form in  
25 June when we were here arguing before Judge Lagueux, we

1 renewed our request, and shortly following the hearing  
2 Judge Lagueux made the referral. So I think the  
3 operation of the statute and the operation of the trial  
4 or travel of this case suggests that that should not  
5 really be a big concern for this Court, respectfully.

6 If we were in a business litigation situation, if  
7 we were suing two contracting parties, perhaps that  
8 would make sense. But in this context, it does not  
9 make sense.

10 It also does something very -- something else. It  
11 creates a disincentive to bring these cases. It would  
12 say that a statute that allows a whole panoply of  
13 people who are involved in terrorism to be responsible,  
14 it would suggest that the plaintiffs have to file  
15 either individual suits and risk that they may be  
16 merged, and then subject to that type of rule, or allow  
17 one of many defendants to interfere with obtaining  
18 justice against defendants who -- who have basically  
19 thumbed their nose at this Court and had said we're not  
20 going to participate, we don't have to participate, and  
21 but for the PLO taking up their position repeatedly,  
22 they have not respected this Court. Why should my  
23 clients be at a disadvantage? Why should the victims  
24 be disadvantaged simply because one party says we don't  
25 want to show up? So I guess that's how I would

1 respond.

2 THE COURT: with regard to your observations  
3 that you don't necessarily feel that having  
4 inconsistent judgments would be a problem, isn't there  
5 a problem posed by the fact that you have alleged the  
6 defendants are jointly and severally liable, and if we  
7 have two inconsistent judgments, how do we determine  
8 what, in fact, the defendants are liable for?

9 MR. STRACHMAN: Again, Judge, that assumes  
10 there would be some inconsistency. I don't assume that  
11 the natural course of events, or the evidence would  
12 suggest that there would be inconsistent judgments. I  
13 would assume that the judgments, based on the evidence,  
14 would be similar if there was another proceeding  
15 against the PLO, and if they were bound by this  
16 proceeding. Frankly I don't think there's much they  
17 would do to contest the evidence in this proceeding.  
18 I think it's frankly a fairly straightforward type of  
19 proceeding. It's not a complicated business dispute  
20 with economists who come up with all kinds of  
21 projections. I think it's fairly a straightforward  
22 wrongful death type of situation.

23 THE COURT: I take it, Mr. Strachman, that  
24 the plaintiffs take no position on my question as to  
25 whether or not, if I determine after this hearing that

1 the proper amount of damages is X amount of damages,  
2 and judgment is entered against the HAMAS defendants  
3 for that amount, X amount of dollars, that if and when  
4 the PA and PLO are found liable, that that X amount of  
5 dollars figure will have no effect on them?

6 MR. STRACHMAN: I would assume -- frankly,  
7 Judge, we haven't researched the issue. We haven't,  
8 you know, learning that there was an objection raised  
9 at 4:40 on Wednesday afternoon, haven't fully thought  
10 through the issue. But, as I said, I think it probably  
11 would. I think it probably would.

12 THE COURT: Would have an effect?

13 MR. STRACHMAN: Yeah, it probably would,  
14 your Honor, because the evidence would be identical. I  
15 don't think there's much of a --

16 THE COURT: But would there be another  
17 hearing?

18 MR. STRACHMAN: I don't know. I don't know.

19 THE COURT: Would they be entitled to  
20 another hearing on damages?

21 MR. STRACHMAN: Perhaps they would.

22 THE COURT: Would the fact that I've  
23 excluded Mr. Sherman from participating in the hearing  
24 this morning have a bearing on whether or not they  
25 would be entitled to another hearing on the issue of

1 damages?

2 MR. STRACHMAN: Well, I think you've  
3 excluded them, Judge, in the sense that you've  
4 suggested their motion is not being heard. They didn't  
5 ask to intervene in this hearing. They didn't ask to  
6 participate. They didn't ask for discovery. They  
7 didn't ask to depose our witnesses. Discovery has been  
8 stayed at their request. Perhaps, Judge, all of these  
9 questions beg for the severance of these claims, and  
10 that would allow preservation of any rights that the  
11 Palestinian defendants claim, and it would allow my  
12 clients to do what they intend to do, and that is  
13 obtain a judgment, a final judgment, an execution, and  
14 proceed. It begs out for that, Judge, so that we do  
15 not prejudice the parties. I think we all sort of  
16 recognized that in a conference yesterday, at least  
17 counsel all recognized that.

18 THE COURT: You're indicating if severance  
19 were granted, then it would be legally permissible to  
20 have judgments in different monetary amounts?

21 MR. STRACHMAN: Absolutely. There would be  
22 separate cases. As we've indicated, your Honor, in our  
23 filing yesterday, which were motions but were also in  
24 the nature of an objection to the issues raised by my  
25 brother, would absolutely be a factor. The case is

1 very clear, including the determination from the First  
2 Circuit, that severed cases create absolutely separate  
3 cases in the sense that there would be no res judicata,  
4 there'd be no collateral estoppel, there'd be no  
5 binding effect between a judgment obtained in one case  
6 and a judgment in another case, absolutely.

7 THE COURT: And you filed that motion for  
8 severance as a separate motion yesterday?

9 MR. STRACHMAN: Right. If I could just back  
10 up, Judge. We were alerted to their motion at 4:48  
11 Wednesday. At 9:30 I was called by your Honor's clerk  
12 and indicated that we would have a hearing at 10:30,  
13 and at 9:45 we filed, you know, a memorandum which we  
14 subsequently separated into separate motions but, yes  
15 we've asked for severance, and I think -- I think the  
16 representations made by my brother this morning sort of  
17 -- are begging the Court to basically do that. I think  
18 it's a recognition that they don't want this proceeding  
19 to bind them, yet they're not -- they have not  
20 requested to stop this proceeding but for, or  
21 participate in this proceeding, but for the allegation  
22 that they raise, which your Honor found to be basically  
23 waived. They have the right to do discovery. We've  
24 asked for discovery. We asked for discovery in  
25 January. Counsel and your Honor had a telephone

1 conference, I believe in April, on this matter, very  
2 briefly, setting it down for a hearing, and  
3 subsequently Judge Lagueux stayed all discovery.

4 THE COURT: All right. Mr. Sherman, since  
5 you're still here, let me draw upon your presence for a  
6 question. Do you know at this point whether or not the  
7 PA and PLO will be opposing the motion for severance,  
8 or that matter has not been decided yet?

9 MR. SHERMAN: It's not been decided, your  
10 Honor. It's under consideration.

11 THE COURT: I would assume if you are going  
12 to object, you'd file it within 10 days.

13 MR. SHERMAN: Yes.

14 THE COURT: Very well. Thank you,  
15 Mr. Sherman. I have some other questions briefly for  
16 Mr. Strachman before we get to the hearing. Do  
17 plaintiffs agree that this Court must determine whether  
18 it has personal jurisdiction over the HAMAS defendants  
19 in the process of deciding this motion for entry of  
20 default judgment?

21 MR. STRACHMAN: Your Honor, we requested  
22 default judgment November 29. In that brief, we filed  
23 a -- we filed a 25 page brief, we filed, I believe, 8  
24 or 10 exhibits, including an FBI affidavit from a  
25 special agent indicating the extensive connections

1       between HAMAS as an organization and this country. We  
2       also referenced the extradition proceeding of a  
3       gentleman by the name of Abu Marzook, who is a military  
4       leader of HAMAS, who operated for years here.

5               THE COURT: I have looked at the exhibits.  
6       My question is not whether you have submitted evidence  
7       in support of that contention but simply whether or not  
8       this Court has to reach that issue. I have to -- in  
9       order for the Court to enter default judgment against  
10      the HAMAS defendants, the Court must necessarily  
11      determine that it has personal jurisdiction over them,  
12      do you agree?

13               MR. STRACHMAN: I think it assumes that.  
14      Yes, Judge.

15               THE COURT: All right. What standard of  
16      proof should the Court apply in making that  
17      determination?

18               MR. STRACHMAN: Well, in this case, I think  
19      there's, in a sense, an easy solution to that question,  
20      and that is that all of the evidence that we supplied,  
21      that's fairly extensive, and as well as -- and I don't  
22      want to belabor the point, but other determinations of  
23      other courts concerning HAMAS as an organization, none  
24      of that evidence has been objected to, controverted, so  
25      all of the evidence, the only evidence before your

1 Honor, is in favor of jurisdiction. In other words,  
2 there's nothing that's been submitted other than a  
3 footnote here or a footnote there, in the Palestinian  
4 defendants briefs, suggesting that there is an issue.  
5 And so it would seem to me that the overwhelming  
6 evidence before the Court suggests that there is --  
7 that the Palestinian -- the HAMAS defendants are here  
8 and are present, such that there would be jurisdiction.

9 THE COURT: Recognizing that you feel that  
10 the evidence is overwhelming, in terms of adopting a  
11 standard, however, to measure that evidence, do the  
12 plaintiffs feel the Court has to use a clear and  
13 convincing standard, or some lesser standard?

14 MR. STRACHMAN: I think it can use -- I  
15 think it can use a standard of -- the standard that's  
16 standardly used, it's more probable than not, and --

17 THE COURT: More probable than not.

18 MR. STRACHMAN: I think that's an  
19 appropriate standard especially in light of the fact  
20 that this a default judgment on defendants who have --  
21 for which all of the evidence is -- inures to their  
22 favor, by law. By law, all of the evidence inures to  
23 their favor -- in our favor because they are in  
24 default, and the Court can accept as true all of the  
25 statements that we've made in our complaint, in our

1 proceedings, our filings, rather, because they have not  
2 contested any of the allegations. And nor, by the way,  
3 just so we're clear, Judge, nor have the Palestinian  
4 defendants, while they raise an issue, and they raise  
5 this, a red herring here and there, they have never  
6 come forward with this Court and to say there is no  
7 jurisdiction for HAMAS and here's why. They've never  
8 said why. So even Mr. Sherman, who now argues on  
9 behalf of HAMAS and the lack of jurisdiction in the  
10 brief on Wednesday, has not brought forth anything that  
11 would suggest otherwise.

12 THE COURT: Is it the position of the  
13 plaintiffs that HAMAS has minimum contacts with the  
14 United States sufficient to satisfy the due process  
15 clause necessary for the Court to have personal  
16 jurisdiction?

17 MR. STRACHMAN: Absolutely.

18 THE COURT: Does that also hold true for the  
19 individual HAMAS defendants?

20 MR. STRACHMAN: I think it does, Judge,  
21 based on all the reasons that we said in our brief.  
22 But recognizing that there is a -- there very well may  
23 be a distinction between HAMAS as an organization and  
24 the individual defendants.

25 THE COURT: In reading your brief, it was my

1 impression that you, at least in one section,  
2 plaintiffs make the argument the Court may exercise  
3 personal jurisdiction over HAMAS even if it does not  
4 have minimum contacts. Am I reading your brief  
5 correctly?

6 MR. STRACHMAN: I think, Judge, that the  
7 standard in terrorism cases and the standard in cases  
8 involving terrorists which reside abroad, and acts that  
9 occurred abroad, have a different level of analysis.  
10 These defendants, by the way, Judge, so -- I know your  
11 Honor is clear, but just -- I mention it, were all  
12 served personally, like the individual HAMAS  
13 defendants, and in our brief, we've demonstrated to the  
14 Court how they personally were served pursuant to Hague  
15 Convention protocols of this proceeding. And by the  
16 way, Judge, were repeatedly served. In other words, on  
17 November 29 of 2000, we sent each of the individual  
18 defendants, as well as HAMAS in two locations, two of  
19 their offices. Just the other day HAMAS office also  
20 signed personally, and I'll present to the Court, for  
21 the notice that we sent to them, I believe on June 25  
22 of the Court's notice of this hearing. So they've been  
23 -- and they've been noticed all along. For instance, a  
24 renewed motion in January, a motion for a ruling. So  
25 they've been noticed all along at every stage.

1                   THE COURT: My last question for you,  
2 Mr. Strachman, before we start the hearing, is  
3 determining the amount of damages, what standard of  
4 proof should the Court use?

5                   THE COURT: Well I think the general  
6 standard, Judge, in civil cases, and that is it's more  
7 probable than not, or it's the general civil standard.

8                   THE COURT: All right. We'll now proceed to  
9 commence the hearing. Mr. Sherman, thank you for your  
10 appearance this morning. You're excused again.

11 (MR. SHERMAN LEAVES THE COURTROOM)

12                   MR. STRACHMAN: Your Honor, might it be  
13 possible to move this table?

14                   THE COURT: Where would you like to move it  
15 to?

16                   MR. STRACHMAN: Is that inconvenient for the  
17 Court?

18                   THE COURT: Do you wish to move the table or  
19 just move your position?

20                   MR. STRACHMAN: My position and belongings.

21                   THE COURT: You may move your position and  
22 also your belongings.

23                   MR. STRACHMAN: Thank you, your Honor. Your  
24 Honor, before we begin, in order to help move things  
25 along, we've premarked all the exhibits. No one is

1       objecting to any of the exhibits. I would ask that  
2       they be all marked and give the Court a copy, as well  
3       as your Honor -- your Honor a copy, so that we can sort  
4       of speed through the process and save time.

5               THE COURT: You may do so.

6               MR. STRACHMAN: Thank you.

7               THE COURT: Are you ready with your first  
8       witness, Mr. Strachman?

9               MR. STRACHMAN: Yes, your Honor. Just I'd  
10       like to briefly introduce the parties to you. The  
11       children are here and I'd ask that they leave after I  
12       introduce them to your Honor, and also if your Honor  
13       feels it appropriate they'd be available to either talk  
14       to your Honor or to interview them as you feel  
15       appropriate.

16               THE COURT: All right. You may introduce  
17       them and then they will be excused from the courtroom.

18               MR. STRACHMAN: Thank you, your Honor.  
19       Could I ask that the family stand up. Your Honor, the  
20       two children in front of me are Dvir and Yishai who are  
21       the children of Yaron and Erfat. And next to them, or  
22       with them, are Yaron's parents Judith Dasberg, Meir --  
23       excuse me, Judith Ungar, Meir Ungar and their son  
24       Amichai Ungar, behind them is their daughter Michal  
25       Cohen and their daughter Dafna Ungar. Next to them are

1 Efrat's grandparents -- excuse me, Efrat's parents who  
2 are the caretakers for the children now, Rabbi and Mrs.  
3 Dasberg.

4 THE COURT: All right, thank you. The  
5 children may be excused from the courtroom.

6 MR. STRACHMAN: Lastly, your Honor, I can  
7 provide an opening if your Honor feels it's helpful.  
8 If not, I'd be happy to just proceed with the  
9 witnesses.

10 THE COURT: I think I'd like to hear a  
11 brief opening, if you could perhaps indicate who you  
12 will be calling and what you expect each witness to be  
13 testifying to, not in minute detail but just generally  
14 if you can keep it within 5 minutes, just an overview  
15 of what you will be doing.

16 MR. STRACHMAN: Certainly. Thank you,  
17 Judge. Your Honor, since Liability is not at issue  
18 here and we're here simply to assess damages, most of  
19 our witnesses will be here to discuss the damages that  
20 were caused by this horrible and violent murder of the  
21 Ungars.

22 The first witness that we'll call is Doctor Alan  
23 Friedman. He is both an Israeli and an American  
24 physician, and he will testify to the injuries that  
25 Yaron Ungar received and the nature of the attack and

1 how it occurred. Subsequently we will present the  
2 testimony of Doctor Adrian Ziderman. He's an  
3 economist, and he has provided a report, and also a  
4 supplement to his report concerning lost economic  
5 damages. Next, your Honor, we will provide the  
6 testimony of Professor Meir Ungar and Mrs. Judith Ungar  
7 who are the parents of Yaron. They will testify to the  
8 type of person and character that Yaron had. They will  
9 also testify to their own loss of feelings, loss of  
10 consortium. Similarly, Judge, their 3 children will  
11 testify, and they will also provide testimony  
12 concerning their own loss of consortium, et cetera.

13 The Dasberg family is here, your Honor, and they  
14 will testify to the nature and character and  
15 personality of Yaron Ungar, and also the effects on the  
16 children, the needs of the children, in light of their  
17 parents' brutal murder.

18 Lastly, Judge, we will present the testimony of  
19 Doctor Alan Brenman, a psychologist, who will talk  
20 about the likely impact and effect that their parents  
21 murder will have on Dvir and Yishai.

22 THE COURT: Fine. Thank you.

23 MR. STRACHMAN: Thank you. Doctor.

24 THE CLERK: Do you affirm that all the  
25 testimony you are about to give in the case now before

1 the Court will be the truth, the whole truth and  
2 nothing but the truth, and this you do affirm under the  
3 pains and penalties of perjury?

4 THE WITNESS: I do.

5 THE CLERK: Could you please state your name  
6 and spell your last name for the record?

7 THE WITNESS: Alan Friedman. A-L-A-N  
8 F-R-I-E-D-M-A-N.

9 THE CLERK: Thank you. You may be seated.

10 ALAN FRIEDMAN, PLAINTIFF WITNESS, SWORN  
11 DIRECT EXAMINATION

12 BY MR. STRACHMAN:

13 MR. STRACHMAN: Your Honor, since  
14 Dr. Friedman's presentation will be somewhat graphic,  
15 the family would like to be excused for his testimony.

16 THE COURT: The family may be excused, and  
17 anyone else who wishes to leave the courtroom may be  
18 excused at this time.

19 MR. STRACHMAN: Thank you.

20 THE COURT: You may proceed.

21 Q. Doctor Friedman, where do you live?

22 A. I live in Jerusalem, Israel.

23 Q. And what is your profession, sir?

24 A. I'm a physician --

25 THE CLERK: You have to speak into the

1 microphone, please.

2 A. I am a medical physician.

3 Q. And what is your education?

4 A. I went to Yeshiva University in New York City.  
5 Followed that with going to Albert Einstein College of  
6 Medicine in the Bronx, New York. Following that, I did  
7 an internal medicine residency at North Shore  
8 University Hospital in Manhasset, New York, for which  
9 I'm board certified in internal medicine by the  
10 American Board of Internal Medicine. Following that, I  
11 did a three year residency in physical medicine and  
12 rehabilitation at the Kessler Institute for  
13 Rehabilitation, University of Medicine and Dentistry,  
14 New Jersey. Again I am board certified in physical  
15 medicine and rehabilitation by the American Board of  
16 Physical Medicine and Rehabilitation, which is referred  
17 to as PM&R.

18 Q. Now, you have a copy of your resume?

19 A. No, I don't.

20 MR. STRACHMAN: May I approach the witness,  
21 your Honor?

22 THE COURT: You may.

23 Q. Thank you. Doctor Friedman, I'm showing you  
24 what's been marked as Exhibit 4, can you tell us what  
25 that is?

1 A. This is my resume.

2 Q. You prepared that?

3 A. Yes, I did.

4 MR. STRACHMAN: Your Honor, we ask this be  
5 marked as a full exhibit?

6 THE COURT: It may.

7 (Plaintiff's Exhibit 4 was admitted as a full exhibit.)

8 Q. Now, Doctor Freidman, in connection with your --

9 THE COURT: Excuse me, Mr. Strachman. I  
10 granted your permission to have that marked as a full  
11 exhibit. Has it been given a designation as A or 1 or  
12 something?

13 MR. STRACHMAN: I apologize, your Honor. I'm  
14 sorry, Exhibit 4.

15 THE COURT: Exhibit 4.

16 MR. STRACHMAN: Correct.

17 THE COURT: Thank you.

18 MR. STRACHMAN: I provide your Honor a  
19 packet. The packet has tabs. Each of the tabs are  
20 tabbed consistent with the way the exhibits have been  
21 marked.

22 THE COURT: All right.

23 MR. STRACHMAN: I apologize for not  
24 explaining that.

25 Q. Doctor, in connection with your training, have you

1 become licensed in any place?

2 A. I am licensed in the State of New York, the State  
3 of New Jersey, as well as Israel.

4 Q. You speak Hebrew?

5 A. Yes, I do.

6 Q. Are you fluent?

7 A. Yes.

8 Q. Okay. In connection with your education, have you  
9 done any teaching?

10 A. Yes, I have. First as part of any residency, the  
11 senior residents are responsible for teaching medical  
12 students and the more junior residents. In addition,  
13 as an attending physician, meaning one who is  
14 practicing medicine, one de facto teaches the residents  
15 that are still working on the wards, as well as other  
16 physicians, and at Hadassah University where I work,  
17 it's a training program and I do have roles for  
18 teaching residents there.

19 Q. And do you have any experience with trauma  
20 victims?

21 A. Yes, I do.

22 Q. Describe that experience?

23 A. Well, unfortunately, a significant amount of what  
24 I do entails dealing with trauma victims. Part and  
25 parcel of any PM&R residency deals with trauma both

1 blunt and penetrating. More recently, working at  
2 Hadassah Hospital in Jerusalem, unfortunately I've been  
3 seeing many trauma victims, more penetrating, dealing  
4 with gunshots, explosions, terrorist activities.

5 Q. And, are you familiar with and treated people with  
6 brain injuries?

7 A. Yes. Let me explain a little bit more what PM&R,  
8 or physiatry entails. Perhaps this will answer some of  
9 your questions a little bit more. I try to almost  
10 define it as two fields, the rehabilitation part of it  
11 is the one end of the spectrum in which we deal with  
12 more chronic long term injuries such as strokes, the  
13 post trauma victims, spinal cord injury, traumatic  
14 brain injury, chronic diseases such as Parkinson's  
15 disease. The second half of that, which is the  
16 physical medicine realm, almost deals with the total  
17 opposite end of the spectrum which is anything  
18 orthopedic other than surgery where you're trained in  
19 conservative management. This entails injuries to the  
20 back, to the neck, to the limbs, nerve injuries, muscle  
21 injuries, and also entails what I refer as peripheral  
22 neurology more so than central neurology, meaning the  
23 peripheral nervous system supplying the rest of the  
24 body other than the brain. Obviously we do deal with  
25 the brain also when we deal with stroke and head

1       trauma. But neurologists also spend a lot more time  
2 dealing with seizures, which we don't normally get  
3 involved in.

4       Q.     Do you have any areas of specialization?

5       A.     I specialize -- much of what I do is diagnostic  
6 work on peripheral nerve injuries and limb pain and  
7 dysfunction, as well as pain management.

8       Q.     Could you tell us what that involves? What does  
9 pain management mean?

10      A.     Pain management -- what I do is the noninvasive  
11 pain management. Just as a parenthetical comment, much  
12 of what gets included under the rubric of pain  
13 management in this country, when people hang their  
14 shingles they're referring to invasive pain management  
15 which includes a lot of epidural injections and  
16 specific injections, or minor surgical procedures. I  
17 do not deal with the invasive end of it. What I deal  
18 with more is the conservative pain management which is  
19 more essentially finding an effective medicine regimen  
20 that controls people's pain. And again this takes  
21 awhile to evaluate. First you have to understand  
22 what's causing the pain, where it's coming from, and  
23 then a trial basis, and trial and error quite often,  
24 finding the proper regimen.

25      Q.     And did you just describe then, or is that

1 separate from -- strike that. I'm sorry. When you  
2 treat people who have suffered acute injuries, do you  
3 come up with something called a rehab plan?

4 A. Yes. Again, this is more in the inpatient side or  
5 people who have just been released from a rehab unit,  
6 but our rehab plan is a comprehensive plan which really  
7 entails -- it's a multi specialty approach. We take  
8 the initial trauma report, for instance, in a trauma  
9 case, we take the initial trauma report, I would take  
10 what has been done for the patient since that time, and  
11 where the patient is functioning now, then combining  
12 that history with the patient's current complaints and  
13 their function, arrive at a plan which entails physical  
14 therapy, occupational therapy, sometimes speech therapy  
15 if needed, as well as social services, and usually  
16 psychological help.

17 Q. And in the current text of -- in the context of  
18 your work, did you say you review trauma reports?

19 A. Quite often.

20 Q. Why is that important?

21 A. Well again, if somebody is involved in a  
22 traumatic -- has a traumatic injury, and they then  
23 arrive -- for me to arrive at a rehab plan, I need to  
24 know exactly what happened to them and how this is  
25 impacting on their function. The key word in rehab is

1 function, and just because, for instance, somebody may  
2 have shattered a bone and had a fracture, and then the  
3 surgeons plated that fracture or casted it, it doesn't  
4 tell me anything about the function or how the injury  
5 happened so that I can actually try to figure out  
6 specifically what injuries they may have had, and that  
7 are now going to impact on their function which did not  
8 necessarily impact on what the first line of treatment  
9 may have been.

10 MR. STRACHMAN: Your Honor, at this time I  
11 would ask that the witness be qualified as an expert in  
12 trauma medicine and the treatment of people who have  
13 suffered trauma.

14 THE COURT: Granted. The Court so rules.

15 MR. STRACHMAN: Thank you.

16 Q. Now, Doctor Friedman, in preparing for your  
17 testimony today, have you reviewed any documents?

18 A. I have. I have reviewed, in Hebrew, the reports  
19 prepared by Doctor B. Leavey of the Greenberg Institute  
20 of Forensic Medicine. Essentially, examination of the  
21 bodies, both -- there's a report both on Yaron Ungar  
22 and Efrat Ungar that I reviewed.

23 Q. You reviewed both of them?

24 A. I reviewed both of those in Hebrew. There is  
25 subsequently a translation of Yaron's examination. I

1 reviewed that in English and compared it to the Hebrew,  
2 and the two are consistent with each other. In  
3 addition, I've reviewed a translation of the police  
4 report and have received pictures of the police scene  
5 and the crime scene and the examination of the bodies.

6 Q. Okay. You also have a copy of the crime scene  
7 picture board?

8 A. Yes, I do.

9 Q. And that's in the original Hebrew?

10 A. That is in Hebrew, correct.

11 MR. STRACHMAN: Your Honor, at this time I  
12 would ask that Exhibits 1, 2 and 3 be entered as full  
13 exhibits. They were provided, your Honor, by the State  
14 of Israel Directorate of the Courts to us, and I would  
15 ask that -- they're self-authenticating. We have  
16 translations, as well. They are attached to the  
17 exhibits, your Honor.

18 THE COURT: All right. They may be marked  
19 as full exhibits.

20 MR. STRACHMAN: Thank you.

21 Q. Now you said that Doctor Leavey prepared, I think  
22 you said, a forensic report. Is that how you  
23 characterized it?

24 A. Essentially what it was is an external examination  
25 of the body. There was no internal post-mortem or

1 autopsy performed.

2 Q. And is that standard in Israel? Is that the  
3 practice?

4 A. The practice in Israel is not to do an internal  
5 autopsy unless there is a specific question of a  
6 criminal act for which they're trying to determine the  
7 cause of death.

8 Q. Is there any reason -- okay. Excuse me. And in  
9 your review of these records, have you determined how  
10 the injuries to Yaron were sustained?

11 A. Yes. By essentially piecing together both the  
12 examination of Doctor Leavey and the pictures and the  
13 actual writing of the police report, one can piece  
14 together almost what happened, or exactly what  
15 happened.

16 Q. Can you tell us -- can you tell us what happened?

17 A. Yes. It appears that while the Ungars were  
18 driving along in their car, another -- the terrorists,  
19 the shooters, drove up behind them, and as they start  
20 passing the car on the left side, which is the driver's  
21 side, they start shooting. They get to that because  
22 the only bullet -- entries of bullet signs on the back  
23 side of the car are on the left, the far left side of  
24 the back windshield, which leads me to conclude that  
25 they did not start shooting until they started pulling

1 alongside to the left and started shooting at the car  
2 at that point.

3 Q. Excuse me. Are you referring to anything  
4 specific? Are you referring to the crime scene picture  
5 boards?

6 A. There is a crime scene picture board.

7 Q. Is that number 11?

8 MR. STRACHMAN: Your Honor, referring to the  
9 large --

10 A. Yes, 11 and 12.

11 MR. STRACHMAN: Referring to the large  
12 picture boards that were provided. The original is  
13 with your Honor, as well as with the clerk.

14 THE COURT: That's contained in the envelope  
15 marked Number 1?

16 MR. STRACHMAN: Yes, your Honor.

17 THE COURT: And you're on which?

18 MR. STRACHMAN: Number 11, Judge, which is  
19 the sixth sheet.

20 THE COURT: Are these individual sheets  
21 numbered or paginated?

22 MR. STRACHMAN: They are not, Judge, and we  
23 did not want to -- you'll see the numbers on the right,  
24 Judge, next to the pictures. We did not want to tamper  
25 with the -- they did not come to us from the Government

1 that way, but if I could, your Honor, it's right here.  
2 Those are the picture numbers.

3 THE COURT: Mr. Strachman, I'm going to ask  
4 you to look at my copy and locate the documents you're  
5 trying to direct my attention to.

6 MR. STRACHMAN: A translation, your Honor, of  
7 the captions of each of those pictures are Exhibit 2.

8 THE COURT: All right.

9 Q. Now -- I'm sorry, Doctor, continue and tell us how  
10 the bullets followed?

11 A. So then as they start passing the car, coming back  
12 along the driver side from the back, the report states  
13 there were 6 bullets in the left back window, which  
14 would be the back seat window on the driver's side.  
15 Some of these appeared to have struck Efrat Ungar  
16 directly in the back of the head. This would be based  
17 on pictures Number 15 and 16 in which the police have  
18 placed a straight rod through these -- some of these  
19 bullet holes straight through the driver's headrest.  
20 There's also consistent with the examination report on  
21 Efrat that she sustained large wounds in the back of  
22 the head and the base of the head, through which her  
23 brains essentially left her head.

24 Q. Those are the pictures in 15 and 16?

25 A. Yes.

1 Q. She was driving the car?

2 A. Yes.

3 Q. Okay.

4 A. That would be consistent with her wounds in that  
5 case.

6 Q. And what happened next?

7 A. Well, as they seemed to approach now the driver's  
8 side window, the police report states that there are 16  
9 shots that come through this left, essentially the  
10 driver's window. These ones that are alongside of  
11 them, again picture number 19 now. Many of these shots  
12 are now perpendicular to both the driver and the  
13 passenger in the front passenger seat. It seems that  
14 Yaron suffered wounds to a number of body parts. The  
15 first would be the left forearm and elbow region, which  
16 again would be consistent with one of these shots that  
17 come through those windows since he's sitting on the  
18 right side of the car where his left hand would be  
19 facing closest to that window. The arm is shot, and  
20 there are a number of open holes, large holes, through  
21 which lacerated and somewhat macerated muscle  
22 protrudes. In addition, there is a picture of his  
23 left, most likely his radius. I believe the pathology  
24 report specifically said the radius, or one of the two  
25 forearm bones protruding through his skin. So he was

1 shot through these bones. And this essentially came  
2 through the -- through the skin.

3 Q. Those are the first injuries that he received?

4 A. Those were amongst the first injuries that he  
5 received, yes.

6 Q. Now pictures of those injuries, they're contained  
7 in the supplemental package that is Exhibit 1?

8 A. I don't have an exhibit number but, yes.

9 Q. Excuse me, Exhibit 3.

10 MR. STRACHMAN: These are supplemental  
11 pictures, your Honor, that were provided to us. The  
12 pictures that are in the back are fairly graphic as to  
13 the specific injuries.

14 Q. Now after -- so the first -- amongst the first  
15 injuries that he received were the injuries to the  
16 arms, is that right?

17 A. It would appear so.

18 Q. Okay. And were those injuries the cause of his  
19 death?

20 A. No. The pathologist actually states specifically  
21 that despite the amount of destruction and the large  
22 size of the wounds, there's relatively little bleeding  
23 which would indicate that no large blood vessel was  
24 struck and therefore the only way that he could really  
25 have died from the wound to the arm would be bleeding

1 to death, and there's no evidence to support that there  
2 was a large amount of bleeding.

3 THE COURT: Excuse me, Mr. Strachman.  
4 Doctor, how do you conclude, or what do you base your  
5 opinion that was among the first wounds that he  
6 sustained?

7 THE WITNESS: It just seems to follow the  
8 path of the way they state that the wound came in. The  
9 fact that he was sitting there. Perhaps he raised his  
10 arm up to protect himself instinctively, but it came  
11 through on his left arm whereas the later wounds that  
12 he would have received through the -- from the front  
13 most likely would not have struck him on the side in  
14 the arm. It's almost on the back side of the --

15 THE COURT: Would you hold your arm up and  
16 show me where the entry wound of that particular wound  
17 is that you are describing?

18 THE WITNESS: Okay.

19 THE COURT: Hold up your arm.

20 THE WITNESS: Okay. The wound is on the  
21 back side here.

22 THE COURT: Okay. Thank you. Slightly  
23 beneath the elbow?

24 THE WITNESS: Slightly beneath the elbow.  
25 There's one here and apparently one of them -- sorry,

1 upper. A little bit lower. But on this part of the  
2 arm.

3 THE COURT: Is the wound through and  
4 through?

5 THE WITNESS: No. what you mean, go through  
6 to the other side?

7 THE COURT: Entered on one side and exited  
8 on the other side of the arm.

9 THE WITNESS: It doesn't appear to be.

10 THE COURT: Thank you. You may resume,  
11 Mr. Strachman.

12 Q. Was he conscious when that happened, or subsequent  
13 to that, sustaining that injury?

14 A. Yes.

15 Q. And would he have been in pain because of that  
16 injury?

17 A. Tremendous amount of pain. From -- everybody has  
18 a different level of pain, but fracturing a bone is a  
19 tremendously painful thing. Muscles have their own,  
20 and skin for sure has its own sensory innovation, and  
21 this causes -- any traumatic penetrating vein causes  
22 pain, the body's natural response. Such a large amount  
23 of trauma would undoubtedly cause pain.

24 Q. What was the next injury that he sustained?

25 A. It appears that he rotated himself towards the --

1 towards the driver's side almost looking as to what's  
2 happening, undoubtedly sees his wife has been shot.  
3 The reason I say this is because there's a -- there are  
4 14 shrapnel wounds to the chest, the largest of which  
5 -- although the pathologist does not say that it's a  
6 bullet, it's at the very least a large piece of  
7 shrapnel that comes directly through to the right side  
8 of the chest, front to back. The bullet wounds in the  
9 windshield were at a slight left to right angle, so  
10 that the only way he could really have been shot  
11 directly front to back would be if he faced the bullet  
12 wounds that are perpendicular to the car, which would  
13 have required him turning and facing the driver's side  
14 window. This would almost be consistent with what  
15 anybody would do. You hear shots coming from your left  
16 side you would turn to see what happened and,  
17 therefore, he takes an almost direct front to back shot  
18 in the right side of the chest.

19 Q. And did that injury, did that wound that -- was  
20 that the cause of death? Would that have caused him to  
21 die?

22 A. Not immediately. It could have had that -- again,  
23 the pathologist does not say that it is a bullet wound  
24 which would definitely have penetrated deep and perhaps  
25 punctured the lung which could cause death in anywhere

1 from 15 to 30, maybe even more minutes than that. So  
2 even if it did penetrate deep and puncture the lung, it  
3 would not have caused him death immediately. And if it  
4 did not penetrate the lung, then it would not be a  
5 fatal wound.

6 Q. And he was conscious at the time then that he was  
7 struck; is that right?

8 A. Yes.

9 Q. And would he be conscious afterwards?

10 A. Yes.

11 Q. How do you know that?

12 A. This is not striking any of his vital organs.  
13 Again, somebody -- let's take the more extreme position  
14 that it penetrated and punctured his lung, well people  
15 walk into the emergency room with punctured lungs.  
16 Even people who have traumatic chest wounds are  
17 conscious. It didn't hit his heart because it's on the  
18 right side of his chest, so there's no evidence that he  
19 would have bled out immediately from that.

20 THE COURT: Excuse me, Mr. Strachman. When  
21 you say, Doctor, that you're not sure, cannot tell from  
22 the autopsy report whether the wound was made by a  
23 bullet or by a piece of shrapnel, where would the  
24 shrapnel have come from?

25 THE WITNESS: The bullet casing or -- he

1       mentions that it's metallic, so presumably a bullet  
2       casing, which is presumably a bullet wound.

3               THE COURT: So you're indicating that you  
4       believe that he, in fact, was referring to a bullet  
5       wound?

6               THE WITNESS: I believe that it was a bullet  
7       wound, but whether it's the head part -- there is a  
8       picture of part of the lower case of a shell embedded  
9       in a piece of glass. It could have been something like  
10      that. My understanding is that it is a bullet.

11              THE COURT: Thank you. Excuse me,  
12      Mr. Strachman, I see it's 11:15. We normally take a  
13      ten minute break mid morning, so I think we'll do that  
14      now.

15              THE CLERK: All rise.

16              (R E C E S S)

17              THE CLERK: All rise. You may be seated.

18              THE COURT: You may resume, Mr. Strachman.

19              MR. STRACHMAN: Thank you, your Honor.

20      Q. Doctor Friedman, we're talking about this chest  
21      wound that Yaron Ungar sustained, can you tell me was  
22      he conscious when he sustained that injury?

23      A. Yes, he was.

24      Q. And how do you know that?

25      A. Again, because up until that time, he had not

1 received anything that would have been a fatal wound or  
2 something that would have hit his -- the senses that  
3 control consciousness.

4 Q. And is there a way you can sort of describe or  
5 analogize the type of pain he might have felt receiving  
6 that injury?

7 A. The chest wound?

8 Q. The chest wound, right.

9 A. Yes. Pictures are always worth a thousand words.  
10 Imagine if you got hit in the chest with a baseball  
11 bat. Everybody, I think, has the experience of having  
12 been hit in the solar plexus at some point, and if you  
13 could just remember back to the amount of the sort of  
14 panic that takes, just trying to catch your breath, so  
15 you start breathing again, then you can just multiply  
16 that. That discomfort feeling impact -- again go back  
17 to the baseball bat analogy, there's that searing pain  
18 that you would be feeling. So you have to this thing  
19 -- granted he's not being hit in the solar plexus but  
20 he's taking a solid whack to his chest. And again, the  
21 chest has a lot of nervous innovation there, tremendous  
22 pain.

23 THE COURT: Doctor, when you say that was  
24 the next wound he received, how do you know that's the  
25 next wound he received?

1 THE WITNESS: It makes sense, and again  
2 putting together the police report and the -- and the  
3 pathology report. It is conceivable that there was a  
4 wound on the right hand, that that occurs almost  
5 simultaneously when he turns around, or a second before  
6 or a second after, but this is the next large wound  
7 that he takes. It just makes sense, judging it based  
8 on the pictures and the police report and the pathology  
9 report. There can't be any other way because again he  
10 has to turn around and take -- and get this chest wound  
11 on the right side, front to back.

12 THE COURT: Was there a head wound?

13 THE WITNESS: There is a head wound.

14 THE COURT: why couldn't the head wound not  
15 have occurred before the chest wound?

16 THE WITNESS: The trajectory of the bullet  
17 doesn't make sense that that would have occurred first.  
18 The trajectory of the bullet on the head wound travels  
19 up on the left side of the face. It doesn't cross over  
20 mid line. So if he was sitting, and it travels  
21 upwards, so if he turns towards the driver, the  
22 driver's side, he's getting shot front to back. He's  
23 not getting shot bottom to top. That wouldn't make  
24 sense. And if they're shooting him and they're coming  
25 in perpendicular, it would have crossed the mid line.

1 It would have crossed over to the right side of the  
2 head, and it doesn't. It only goes straight up the  
3 left side.

4 THE COURT: Well, if he turned to the left  
5 and put his left arm back and he was struck first in  
6 the back of his arm, could the impact of that bullet  
7 have turned his body backwards tilting his head  
8 backwards, which would -- if the next wound that -- the  
9 next bullets that then impacted were in the head, would  
10 that be consistent with that trajectory?

11 THE WITNESS: It wouldn't necessarily -- it  
12 might throw him, but it wouldn't necessarily throw him  
13 back or almost tilt his neck backwards like that. It  
14 might jolt him somewhat but it wouldn't throw him all  
15 the way backwards. And again, you then have to  
16 understand how he gets hit in the chest, front to back.

17 THE COURT: You may resume, Mr. Strachman.

18 MR. STRACHMAN: Thank you.

19 Q. And subsequent to that chest wound, what was the  
20 next injury that he received?

21 A. The next injury that he receives, and again, he  
22 gets hit in the face. There are -- as the car moves  
23 forward, the next -- I'm focusing on the larger wounds  
24 here because he gets hit in the face.

25 Q. Okay. Can you describe that injury?

1 A. Yes. It's best seen in the pictures, which are  
2 tremendously graphic. There is -- the wound that,  
3 according to the pathology report, enters on the left  
4 side of the nose, travels up towards the base of the  
5 eye and fractures the left orbit and enters through the  
6 crown or the temple of the head. Again, staying on the  
7 left side of the body. There is -- as you can see in  
8 the pictures, I'm not sure if everybody is looking at  
9 this --

10 Q. Show us which picture you're looking at.

11 A. This picture. His brains are hanging out of the  
12 left side of his head.

13 Q. Is that the injury that you believe killed him?

14 A. Yes, it is.

15 Q. And why is that? why do you feel that way?

16 A. Again, and this is consistent with the pathologist  
17 report that he -- that this is a wound, although not  
18 immediately fatal again because it doesn't strike  
19 either the areas that control -- it seems more of a  
20 frontal wound. It doesn't hit the respiratory centers  
21 in the back -- in the base of the brain, however, it is  
22 still a large wound and there are pieces of lacerated  
23 brain tissue and there's a shrapnel shell in the brain  
24 tissue, that this is a large enough injury that would  
25 cause death.

1 Q. Now, can you show us on the picture boards? I  
2 direct your attention to numbers 21, 22, 23. Can you  
3 tell us if you have any sense as to how that last --  
4 the injury that you just discussed, how that might have  
5 occurred?

6 A. Yes. He gets hit -- at this point he's hit in the  
7 arms, he's hit in the chest. He's been looking at --  
8 he's seen the cause -- scene of destruction next to  
9 him. He gets hit in the chest which most definitely  
10 would throw him backwards. At this point it appears  
11 that he's lying down on the car seat, almost slumped.  
12 And if you look at picture -- well those that you  
13 referred to, 21, 22, there are bullet wounds that --  
14 entry sites into the front windshield that come in at a  
15 low -- at a low angle, but -- see if I can find it.  
16 Okay. That would certainly be able to come in at that  
17 -- on one side of his face, strike him in the nose and  
18 travel upwards towards the crown of the head. So that  
19 it does seem that the head wound, as you asked before,  
20 Judge, comes in once already in the front part of the  
21 vehicle.

22 Q. So would that be consistent then --

23 THE COURT: Excuse me, Mr. Strachman. Which  
24 head wound, the head wound to the nose or the head  
25 wound to the left side of the --

1                   THE WITNESS: Same wound. It's the left  
2 side of the wound, left side -- sorry. Left nose.  
3 Left side of the nose up towards the eye, coming out  
4 the left side of the head.

5                   THE COURT: Thank you.

6 Q. So is that consistent then with what you said  
7 before in terms of if he was struck in the chest from  
8 the side when he turned toward his wife, and he would  
9 be pushed back against the seat, is that right?

10 A. Yes.

11 Q. And then if he was sort of slumped over, or  
12 slumped back in the seat?

13 A. He would need to be slumped back.

14 Q. Okay. And if he was slumped back, would his body  
15 be pushed that way from the force of the bullets that  
16 struck him in the chest?

17 A. Yes, it would.

18 Q. And when he's laying, or sort of slumped back in  
19 the seat, is what you're saying then is that in  
20 pictures 21 and 22, the sort of lower bullets, if you  
21 will, some of the bullets that are lower down on that  
22 windshield, those are the bullets that would likely  
23 have struck him in the face?

24 A. Yes, they are. More probably than not.

25 Q. Those are the ones that would have killed him?

1 A. Yes.

2 Q. And did he receive -- along the way, did he  
3 receive any other injuries, any notable injuries? Was  
4 there an injury to the neck?

5 A. There was an injury to the neck which comes along  
6 the left side of the neck laterally, so not in the  
7 middle where the trachea or the air pipe is or the  
8 spinal cord is. It's to the side of the vertebral  
9 column, going through the muscles of the neck. That's  
10 on the left side.

11 Q. Now, when -- would the injury to the neck, would  
12 that have killed him?

13 A. No, it would not.

14 Q. And why is that?

15 A. Again, as I said, it does not travel through the  
16 air pipe. It doesn't -- it's to the side of the neck  
17 so that it doesn't -- wouldn't cause him to bleed to  
18 death. There's not a lot of blood in the pictures  
19 there, and it's more in an area of muscle, so it would  
20 be extremely painful. It's not near the spinal cord,  
21 and it's not near again respiratory control centers.

22 Q. So, would that have caused him pain?

23 A. Yes, it would.

24 Q. And can you describe that pain?

25 A. Um, similar to much to what I described before.

1 If you take a -- if you get, excuse the terminology,  
2 whacked with a bat or with a fast traveling heavy  
3 object, into you, as bad as it will be in the chest,  
4 the neck is less bony support, less muscle support, and  
5 therefore it would be that much more painful.

6 Q. Would that have caused him to become unconscious?

7 A. No.

8 Q. How do you know that?

9 A. It would be a traumatic, traumatic injury, not  
10 unlike one to the arm. It doesn't -- it doesn't strike  
11 at anything that controls his vital organs.

12 Q. By this time, in other words, after he sustained  
13 the injury to his arms, his chest, and his neck, were  
14 all of his vital organs operating?

15 A. Yes.

16 Q. He was still breathing?

17 A. He was still breathing.

18 Q. I'm sorry?

19 A. Just to anticipate a question, as mentioned  
20 before, even had his lung been punctured, he would  
21 still be breathing.

22 Q. And at this point, up until the head injury, his  
23 brain had not been struck; is that right?

24 A. Correct.

25 Q. And the injury even to the neck did not strike the

1 stem of the brain?

2 A. Correct.

3 Q. And his heart had not been struck.

4 A. Correct.

5 Q. And so none of his vital sort of functions were --  
6 had stopped; is that right?

7 A. That is right. None of his vital organs have been  
8 compromised at this point.

9 Q. Now the last injury, I think you described it  
10 previously, in terms of the Judge's question, the last  
11 injury, could you describe that to us, how that  
12 happened?

13 A. The head injury?

14 Q. The head injury.

15 A. I thought we had already described that.

16 Q. Okay.

17 A. He's -- essentially the way I see this is he, as  
18 described before, he turns, he gets hit in the chest,  
19 straight on blow, he's hit in the arm, he's turned over  
20 and slumped. He's now back on his chair, slumped back,  
21 and he gets hit in the face with the bullet that  
22 travels up and exits through the brain.

23 Q. And would he be unconscious at that point?

24 A. At the point that he got shot? No.

25 Q. Okay. Would he be unconscious following the shot,

1 sustaining that shot?

2 A. At some point, yes.

3 Q. And --

4 A. How long it takes, unclear, but at least for -- it  
5 again doesn't hit any of his areas controlling  
6 consciousness. So he would be conscious for at least  
7 30 seconds, on the conservative side. Beyond that,  
8 it's hard to say.

9 Q. And that's 30 seconds after?

10 A. After taking the hit, yes.

11 Q. Taking the hit.

12 A. Yes.

13 Q. And do you have an opinion as to a reasonable  
14 degree of medical certainty as to how long this  
15 happened? In other words, from the beginning of the  
16 first shots until that last shot occurred?

17 A. Yes. It seems that the car with the shooters is  
18 passing their car with the intent of firing in and  
19 causing as much damage. You can see that there are  
20 shots that are -- more than one shot that is  
21 perpendicular, so it's clear that the shooter's car is  
22 not zooming past. From the time that he hears the  
23 first shot, and until the time that they have shot into  
24 the back window, he's now presumably thinking that  
25 they've shot his child, that they shoot into the front

1 window, they've killed his wife, he's seen that. They  
2 pass in front of the car. He's been hit a number of  
3 times. They pass in front of the car and shoot him.  
4 We're talking, this has to take, even as a conservative  
5 estimate, at least 3 minutes from start to finish that  
6 he knows what is going on, 3 to 5 minutes, maybe even  
7 more.

8 THE COURT: Your testimony, Doctor, is that  
9 you believe that from the first shot being fired to the  
10 end of the last shot being fired is 3 to 5 minutes?

11 THE WITNESS: I'm sorry. From the first  
12 shot being fired to the last shot being fired, I'm  
13 sorry, is -- has to be less than 3 to 5 minutes. It's  
14 probably about 30 seconds to a minute. I'm sorry. I  
15 was thinking something else.

16 Q. And why do you say it took that length of time?

17 A. The 30 seconds?

18 Q. Yes.

19 Q. Because they have to -- they start shooting.  
20 They're passing the car at the left side, not at top  
21 speed because again they're bullets -- there are a  
22 number of bullets are come in perpendicular, which  
23 shows that they are at least alongside them for a few  
24 seconds, and then they pass in front of them, and they  
25 continue shooting, and that takes time.

1 Q. And do you have an opinion as to a reasonable  
2 degree of medical certainty as to how long Yaron would  
3 have lived following -- having sustained the bullet to  
4 the head?

5 A. Following the bullets in the head?

6 Q. Right.

7 A. It's difficult to say but again, conservative  
8 estimate, a few minutes following bullets being shot in  
9 the head until he dies. There is evidence of a dying  
10 process. The pathology report mentions that his eye,  
11 his pupils are dilated different sizes. One is  
12 5 millimeters on the right side, on the left side is  
13 6 millimeters. Compare that to his wife whose was  
14 3 millimeters, and again she died instantly. There are  
15 a number of processes which will cause this all related  
16 to brain swelling that would dilate the pupils because  
17 the swelling on the brain squeezes down on the nerve  
18 that supplies the eye and controls the pupil. Again on  
19 the left side, again the pupil is somewhat more dilated  
20 than on the right side, which would indicate that the  
21 swelling was worse on the left side of the brain, which  
22 is again consistent with these wounds. But in any  
23 event, that shows that there is a dying process, that  
24 this did not happen immediately and this takes time to  
25 develop, brain swelling.

1 Q. Now from the time he sustained the last injury  
2 until he actually died, that 3 to 5 minutes, do you  
3 know if he was conscious?

4 A. It's difficult to say how long he was conscious  
5 for after he got shot in the -- in the head. It's 3 to  
6 5 minutes, which is what I thought you had asked me  
7 before. I confused the question. 3 to 5 minutes is  
8 probably from the time that he starts hearing them  
9 shooting until the time that he dies, as a conservative  
10 estimate, however, how long he's conscious after he is  
11 shot in the face, it's difficult to know.

12 Q. In other words, you can't give us -- you can't  
13 tell us that from the time he sustained the fatal head  
14 wound, and after that, that he would be conscious; is  
15 that right?

16 A. That is correct.

17 THE COURT: Did I understand you earlier to  
18 indicate that you thought perhaps conservatively 30  
19 seconds after he sustained the head wound he'd lose  
20 consciousness, or did I misunderstand that, Doctor?

21 THE WITNESS: I was confused. I was  
22 thinking two different numbers. That's an estimate,  
23 but I cannot substantiate. I was actually focusing on  
24 a different thing in my mind. I apologize. I cannot  
25 give an exact number to time as to how long he was

1 conscious for.

2 THE COURT: But your estimate is that he  
3 would have died 3 to 5 minutes after receiving the head  
4 wound?

5 THE WITNESS: No. I believe he asked me  
6 after hearing the shots fired, a number of minutes.  
7 Again, 3 minutes is a conservative estimate how long he  
8 would die after he suffered the head wound.

9 THE COURT: Is it likely that he would --  
10 it's a reasonable assumption that he would have lost  
11 consciousness prior to dying at some point?

12 THE WITNESS: Correct.

13 THE COURT: And he would continue to have  
14 been alive for some period of time prior to dying? He  
15 would have continued to be unconscious for some period  
16 of time prior to dying, is that a reasonable  
17 assumption?

18 THE WITNESS: Yes.

19 THE COURT: You may continue, Mr. Strachman.  
20 Q. Just to clarify, we're not saying -- you're not  
21 saying that from the time he was struck with that last  
22 bullet he was conscious. You can't come up with a  
23 figure; is that right?

24 A. I cannot come up with a figure.

25 Q. Okay. And you're saying, just so we're clear,

1 you're saying that from the time he's struck with that  
2 last bullet, you believe he may have lived unconscious  
3 for 3 to 5 minutes?

4 A. Yes, I am.

5 Q. And is that pretty clear that he would have lived  
6 during that period of time?

7 A. Yes.

8 Q. Okay. From the time that the first bullets came,  
9 struck his wife, until the time he sustained the last  
10 bullet to the head, is that the period that you  
11 described as 30 seconds?

12 A. Yes. Not necessarily the first bullet that hits  
13 his wife, the first bullet that's fired at the car.

14 Q. Okay. So from the beginning of this attack, until  
15 he becomes unconscious with that last bullet, you  
16 believe that's approximately 30 seconds?

17 A. Yes.

18 Q. And during that time, he sustains the four major  
19 injuries, right?

20 A. Yes.

21 Q. The other injuries that you said referred to, as I  
22 think you referred to them as less significant, but  
23 other --

24 A. Yes.

25 Q. And his wife was killed?

1 A. His wife was killed next to him.

2 Q. She was killed instantly?

3 A. She was killed instantly.

4 Q. And she was killed by that bullet that struck  
5 through the seat of her car?

6 A. Yes, sir.

7 Q. The headrest of her car?

8 A. Yes.

9 Q. And that's shown in that trajectory?

10 A. Trajectory through the -- from the back window  
11 through the headrest. There's 2 bullets they put rods  
12 through that show coming through that back window in  
13 through the headrest.

14 Q. And Yaron Ungar's son Yishai, Y-I-S-H-A-I, was in  
15 -- was in the car?

16 A. There was a car seat in the car.

17 Q. He was not injured in that -- in this incident; is  
18 that right?

19 A. Umn, there is no report that I have that indicates  
20 he was.

21 Q. Okay.

22 MR. STRACHMAN: I believe that's all, your  
23 Honor.

24 THE COURT: Do you have any training in  
25 crime scene investigation, doctor?

1                   THE WITNESS: No, I do not. However, much  
2 of what I do is, again as we touched upon this earlier,  
3 is taking a trauma report and piecing together what  
4 happens and determining the treatment plan.

5                   THE COURT: Do you know whether or not the  
6 car the victims were riding in speeded up prior to the  
7 first shot being fired?

8                   THE WITNESS: No. However, again she's shot  
9 in the head, in back of the head twice, immediately.  
10 Nobody can know if they sped up or they slowed down.  
11 If she's driving, and she's dead, it could be that the  
12 foot hits the accelerator and they speed up, or that  
13 her car, her foot falls off the gas pedal and they slow  
14 down. I have no clue.

15                  THE COURT: All right. Have you concluded,  
16 Mr. Strachman?

17                  MR. STRACHMAN: Yes, your Honor.

18                  THE COURT: Thank you, Doctor. You're  
19 excused.

20                  MR. STRACHMAN: Your Honor, at this point I'd  
21 move for Exhibit 5 to be admitted as a full exhibit.  
22 That was the forensic report, and that was also  
23 provided to us pursuant -- by the the Israeli  
24 Government pursuant to the certification that's  
25 attached, and that is -- I have the original and also a

1 translation.

2 THE COURT: All right. Granted. Exhibit 5  
3 is full.

4 MR. STRACHMAN: Thank you.

5 (Plaintiff's Exhibit 5 was admitted as a full exhibit.)

6 MR. STRACHMAN: I'd like call to Adrian  
7 Ziderman.

8 THE COURT: Swear the witness, please.

9 THE CLERK: Please raise your right hand.

10 Do you affirm all the testimony you are about to give  
11 in this case now before the Court will be the truth,  
12 the whole truth and nothing but the truth, and this you  
13 do affirm under the pains and penalties of perjury?

14 THE WITNESS: I do.

15 THE CLERK: Will you please state your name  
16 and spell your last name for the record?

17 ADRIAN ZIDERMAN, PLAINTIFF WITNESS, SWORN

18 DIRECT EXAMINATION

19 BY MR. STRACHMAN:

20 THE COURT: Excuse me, sir. I'm not sure  
21 the tape picked up your voice, also. The microphone  
22 was not in front of you. Would you spell your last  
23 name again?

24 THE WITNESS: Z-I-D-E-R-M-A-N.

25 THE COURT: Thank you, Mr. Ziderman. You

1 may proceed, Mr. Strachman.

2 MR. STRACHMAN: Thank you.

3 Q. Doctor Ziderman, you are a professor of economics?

4 A. Yes.

5 Q. Where do you teach?

6 A. I teach at Bar-Lian University in Israel.

7 Q. And where did you go to school?

8 A. I took my BA in Cambridge, England, MA at Stanford  
9 University, and my doctorate at the London School of  
10 Economics in the University of London.

11 Q. And you've been practicing as an economist since  
12 when?

13 A. Since I took my MA, I've had academic and other  
14 positions.

15 Q. When was that? What year? You've got to speak up  
16 so that --

17 A. Yes. I finished my MA in 1963 at Stamford. I  
18 went back to England. I was working for the economist  
19 newspaper as a researcher. I then went into academia  
20 and worked in research institutes at London School of  
21 Economics. I later had academic positions in England.  
22 I then moved to Israel after I married an Israeli, and  
23 I was at Bar-Lian University, Tel-Aviv University, and  
24 I took 4 or so years off to join the World Bank in  
25 Washington as their senior economist in human

1 resources.

2 Q. And do you have a speciality within economics, or  
3 concentration within the field of economics?

4 A. Yes. My general specialities in labor economics  
5 and the economics of education. More specifically, I  
6 work in the fields such as the economics and evaluation  
7 of education, manpower training, and financing of  
8 education.

9 Q. And outside of the World Bank, do you have any  
10 other experience consulting with organizations?

11 A. Yes. Since I left the World Bank, I've been very  
12 active in international consultancy. I'm currently  
13 working on projects for the World Bank and for UNESCO.  
14 I have also worked for OECD for the British council,  
15 for the Asian Development Bank, and other international  
16 institutions, and I also have acted as an adviser to  
17 many Governments, ministries in Kenya, Mozambique,  
18 Tanzania, Thailand, Turkey, South Africa, Zambia, and  
19 of course the UK and Israel.

20 Q. And have you written any books?

21 A. I've written, -- well, I published 4 books, and my  
22 fifth book is now being published by the World Bank.

23 Q. Okay. And are they within your field of  
24 concentration within economics?

25 A. They're all within this broader field of human

1 resources, financing education, vocational training and  
2 so on.

3 Q. Have you published any scholarly articles?

4 A. I published about 65 to 70 articles in scholarly  
5 publications, as well as more popular articles in  
6 newspapers and magazines.

7 Q. Those are referee type of articles?

8 A. Yes. All those 70 are international referee  
9 journals, yes.

10 Q. And are you the editor of any specific journal?

11 A. Yes. I'm the chief editor of the Journal of Human  
12 Resources which is international dissimilarly journal  
13 in the field of manpower.

14 Q. Okay. And is your publishing in English?

15 A. Yes. This is a journal that's published from a  
16 British publishing company that turns out 150 journals  
17 in different fields.

18 MR. STRACHMAN: Your Honor, at this point I  
19 would ask that Doctor Ziderman's CV be admitted and  
20 also that he be qualified as an expert in economic  
21 matters.

22 THE COURT: Granted as to both.

23 MR. STRACHMAN: Thank you.

24 Q. Now, Dr. Ziderman, in connection with this case,  
25 you were asked to prepare a report; is that right?

1 A. Yes.

2 Q. And what was -- what were you -- what did you do?

3 A. Well, I was asked to prepare a report on the  
4 economic losses due to the death of Yaron Ungar, and I  
5 saw my task as first of all trying to ascertain what  
6 would have been the most probable career pattern. The  
7 problem is, of course, that we're talking about a young  
8 man age 26 with many options available to him. As I  
9 had to take a view on what would be his probable career  
10 pattern. The second step would be to estimate what  
11 would be his likely earnings in those different  
12 positions; and thirdly, we had to convert this stream  
13 of earnings into some sort of global present value  
14 figure.

15 Q. Now in connection with your study of the economic  
16 losses resulting from Yaron's death, you were given  
17 certain information by me and his family; is that  
18 right?

19 A. Yes.

20 Q. And could you tell us what information you  
21 understood in terms of conducting this report -- this  
22 study?

23 A. Well, I understood that Yaron had already embarked  
24 upon creating education. Of course he might have  
25 changed direction later on. He was already a qualified

1 teacher. He was about to complete his Bachelor of  
2 Education degree. He had already started toward  
3 rabbinical ordination, and indeed had written a work on  
4 Jewish religious law which was subsequently published  
5 after his death. So this indicated to me that the  
6 probabilities were indeed that he would continue in  
7 teaching and within the framework of religious  
8 education. What was less clear to me whether he would  
9 remain in Israel or perhaps come back to the States,  
10 and this was an issue that I dealt with in the report.

11 Q. Okay. Now in preparing a report, did you have  
12 access to his wage statements, et cetera, indicating  
13 his income?

14 A. Yes. Of course, being at the outset of his  
15 career, we didn't have a lot to go on, but we did have  
16 the -- some salary slips from -- relating to the year  
17 in which he died, and that's set out in the salary that  
18 he then earned as a young inexperienced teacher.

19 Q. Can you tell us what sources of information or  
20 economic data you utilized in preparing your report?

21 A. Well, I looked at a number of scenarios. I took  
22 what I thought would be the most obvious scenario, that  
23 is, what would happen over his career to a young man  
24 with his background and potential, that would remain  
25 within teaching in Israel. It's fairly standard that

1 after completing a first degree, a few years later he  
2 would then take an MA. This is pretty standard.  
3 Quite likely, he would move on from teaching, possibly  
4 to teaching at a teachers training college as a young  
5 lecturer. That's quite -- in his mid 30s. He'd  
6 already started a study towards rabbinical ordination,  
7 and I'm quite clear he would complete that, and I could  
8 quite see at the age of 40, but later, he could well be  
9 a principal of a small Talmudical Yeshivah high school  
10 or some institution. So that marked out for me the  
11 career pattern. The next problem then would be to put  
12 in salary figures relating to that. That was easier  
13 because the Ministry of Education in Israel publishes  
14 very very elaborate salary tables that are public  
15 institutes are required to work with, and so once I  
16 knew in my own mind where he would be in his career I  
17 could then use these tables to estimate what would be  
18 his income on the basis of his academic qualifications,  
19 on the basis of his years in the profession, and so on.

20 Q. Can you tell us the methodology utilized in  
21 preparing this report? How did you go about doing what  
22 -- coming up with a calculation of the lost economic  
23 benefits?

24 A. Well, I said, my first step, and this appears in  
25 fact in my report in Table 1, was to estimate --

1                   THE COURT: Excuse me, Doctor, which exhibit  
2 are we looking at?

3                   MR. STRACHMAN: We're referring, your Honor,  
4 to Exhibit 6.

5                   THE COURT: Thank you. You may continue,  
6 Doctor.

7 A. Yes. The Table 1 actually continues onto the next  
8 page, and in this table, I see --

9                   MR. STRACHMAN: Excuse me, that's on page 6.

10 A. Yes.

11 Q. Is that right?

12 A. Yes. In this table, I develop a career  
13 development pattern, age by age, and of course one  
14 can't be exact, but apart from my own knowledge, I  
15 should add that in addition to being a professor of  
16 economics I'm also a professor of education. I teach  
17 in the school of education, so I'm aware of the  
18 teaching side. I teach a course in educational  
19 planning. Many of my students are MA students of this  
20 type, so I know the sort of careers they pursue. In  
21 addition, I did speak to people, a deputy principal of  
22 one of these colleges, to get some confirmation of the  
23 way I saw his career pattern, so once I had established  
24 a career pattern, I was able to add in the earnings  
25 figures which appear in column 4. We then wanted to

1 convert the gross earnings into cash that was actually  
2 had in hand, the net earnings, and for this, for the  
3 initial year in which Yaron died, we had his salary  
4 slips, so we could just take the figure for -- for net  
5 of earnings. We then asked a certified public  
6 accountant to provide us with the probable tax,  
7 national insurance and health payment deductions.

8 Q. Did you deduct then in your analysis the taxes?

9 A. That's right. Tax compulsory, and that's  
10 insurance payments and compulsory health payments, but  
11 these -- because you need to have some expertise in tax  
12 arrangements, a CPA provided those.

13 Q. In other words, you were -- when you made your  
14 calculation, you came up with net figures, not gross  
15 figures; is that right?

16 A. Yes. This appears in column 5, and this would be  
17 the net salary figure that he'd receive over the year.

18 Q. Okay. Now when you conducted -- when you prepared  
19 your report, did you assume a retirement age?

20 A. Yes. Well, I didn't have to assume the retirement  
21 age because this is laid out in ministerial education  
22 regulations. The time is 65, usually. Of course,  
23 Yaron may have had other employments that he could have  
24 continued to work, but he would have retired from  
25 teaching within ministerial education schools at age

1 65.

2 Q. Now once you calculated his likely earnings, how  
3 then did you complete the task?

4 A. Well, once we had the earnings stream, we -- we  
5 used a process of what we call discounting. We wanted  
6 to know what total sum at the present would be  
7 sufficient to release the annual salary figures to  
8 disburse year by year the annual salary figures so that  
9 at age 76, when we -- which is the -- which is the year  
10 in which we assumed Yaron would have died, according to  
11 statistical tables from the Government's office. At  
12 the age of 76 then this sum would have been reduced to  
13 zero. So, in other words, you have a present value  
14 that a sum would provide sufficient money to pay annual  
15 earnings and pension payments up to age 76.

16 Q. What was the discount rate that you used?

17 A. Well, we used a 3.5% rate of discount.

18 Q. And how did you arrive at that figure?

19 A. Well, it's quite usual to look at the yield on a  
20 safe investment, and to take something like Government  
21 bonds, and this is what we took the yield on Government  
22 bonds. This is available in the Bank of Israel annual  
23 report, and the yield on long term bonds was about  
24 5.35 percent. However, in Israel, these bonds are  
25 liable to a 35 percent rate of income tax. So taking

1 this off, we had a net yield of 3.48 percent which we  
2 rounded up to 3.5%, and that was the interest rate we  
3 used.

4 Q. Now, those bonds are taxable in Israel, as you  
5 just said?

6 A. Yes.

7 Q. They're not taxable in the United States; is that  
8 right?

9 A. Yes.

10 Q. So in -- and is this -- is this use of this type  
11 of figure, this type of discounting figure, and its  
12 correlation to Israel Government bonds, is that the  
13 common sort of methodology in Israel?

14 A. This is standard. This is standard. You can put  
15 -- you can put it another way, if you have -- in order  
16 to be sure that you can make these annual payments out  
17 of a present value sum, you can't put that money into  
18 any risk investment. You got to be sure the money will  
19 be maintained and, therefore, we'll assume that you  
20 used a very safe investment in Government bonds, which  
21 will yield a lower but safe rate of interest. So  
22 that's why it's usual to take Government bonds.

23 Q. In other words, when you say it's usual, is it  
24 usual in general in economic terms throughout the world  
25 to use Government bonds?

1 A. In these sort of figures.

2 Q. And is it specifically usual within the context of  
3 making projections?

4 A. Present value.

5 Q. Israeli present value numbers to use this specific  
6 type of bond?

7 A. Yes, I would say so.

8 Q. So in other words, you wouldn't use an annual  
9 return from the stock market or different type of  
10 financial investment?

11 A. Because it would be risky. You may find in the  
12 end that you're not maintaining your -- I'm sorry, the  
13 sum from which you wanted to make your annual  
14 disbursements was shrinking. It's not only the rate of  
15 interest, it's maintaining the capital, as well.

16 Q. Now, you state in your -- in your report, that  
17 there are -- the methodology is conservative, and why  
18 do you say that? What's conservative about this  
19 report?

20 A. Well, it's conservative in a number of ways. Most  
21 of the work that I do is not on the individual basis  
22 but for Governments, and I have to provide reports that  
23 are very firmly based on statistical sources, and I'm  
24 pretty sure that they are correct. So I did an initial  
25 calculation in which I assumed, as you said, a

1 conservative scenario, and this would mean that Yaron  
2 would have pursued a fairly standard successful career  
3 in Jewish religious teaching in Israel. So it's  
4 conservative first in terms of sort of career he would  
5 have assumed. I didn't add in, for example, the  
6 possibility that he would work as a part time Rabbi in  
7 Israel. Many senior teachers would combine work with a  
8 part time position in Rabbi, half time position. I  
9 didn't --

10 Q. Excuse me. You mean with -- as a clergyman in a  
11 congregation, is that --

12 A. Well, in Israel, we don't so much have Rabbis of  
13 synagogues, we have rather district Rabbis, Rabbis that  
14 are appointed by the Government, by the Ministry of  
15 Jewish affairs to serve as a Rabbi of a city, of a  
16 village, a district within the town, and this is the  
17 sort of position that many of -- that many people who  
18 would be teaching, teaches training college, or  
19 Yeshivah would have.

20 Q. All right. But you did not assume in your  
21 calculations --

22 A. I did --

23 Q. Let me finish the question, okay, because he's got  
24 to take it down. But you did not assume then that he  
25 would have any part time employment?

1 A. The only assumption I made, which is a very liked  
2 one, is that Yaron would have had one-and-a-half  
3 positions as a teacher, and that's absolutely standard.  
4 The normal -- the official standard workload in Israel  
5 is 24 hours, spread over a 6 day working week, and a  
6 college teacher 16 hours, and it's absolutely standard  
7 for -- to have a job and a half, and that's what I  
8 assumed. Indeed, as a student teacher in 1996, Yaron  
9 actually had 1.08 positions, so he already was teaching  
10 more. I should also make clear, the half position  
11 doesn't have to be another institution. You can even  
12 have the extra half position at the same institution,  
13 and it's quite common. But apart from that, I assumed  
14 that you would not have had other forms of income,  
15 which is a pretty strong assumption.

16 Q. So did you say that it's common that in Israel for  
17 teachers who were working in religious schools to sort  
18 of have supplemental type of work, even at their own  
19 school?

20 A. Oh, yes. And not only religious teachers, most  
21 teachers would have more than one pos -- more than one  
22 teaching position.

23 Q. And is that a function of the low salaries?

24 A. Yes.

25 Q. Are the salaries livable?

1 A. It's the function of those salaries, and also the  
2 opportunities, because they are relatively short and  
3 you can teach the same subjects in parallel.

4 Q. And you said that over a 6 day work week, and can  
5 you describe what you mean by that? In Israel, do  
6 people work from Sunday to Friday?

7 A. Well, we've moved towards a 5 day working week in  
8 industry, but in teaching it's still teachers work from  
9 Sunday through to Friday, with Saturday being the one  
10 day off.

11 Q. So, in other words, children would go to school  
12 Sunday through Friday?

13 A. That's right.

14 Q. And did you include in your calculations any  
15 sabbatical type of arrangements?

16 A. No. I -- in Israel, teachers will have a  
17 sabbatical every seventh year.

18 Q. Even elementary type teachers or say teachers  
19 college, teachers?

20 A. It's -- sabbatical leave is quite common in  
21 Israel. The point is that on your sabbatical, you  
22 could then take another job, and this is permitted.  
23 There are limitations. I made no assumption about  
24 extra income from these sabbatical jobs because it  
25 would be purley speculation. Many -- somebody like

1 Yaron could quite likely have gone to America for that  
2 year to teach in a Jewish high school or even work as a  
3 Rabbi, but this is speculation. And although I haven't  
4 ignored that possibility, I didn't include that in what  
5 I called my conservative estimate. I wanted the  
6 conservative career scenario to be fairly clearly  
7 based, strongly based. I think it's most likely that  
8 he would have had extra --

9 Q. But you didn't calculate for it?

10 A. I didn't calculate them in the conservative career  
11 scenario.

12 Q. In addition, in Israel, do students -- excuse me.  
13 Do teachers in these kinds of schools get contributions  
14 to educational funds?

15 A. Well, it's not only in teaching. It's quite  
16 common for an employer to contribute towards an  
17 education fund which is available to the employee to  
18 use to attend conferences, to update his general  
19 knowledge, but he can also over time, if he doesn't use  
20 these fundings, he could take it off his income, over  
21 -- if it's within the fund long enough. So it's a bit  
22 flex -- it could be translated into extra income, and I  
23 didn't make that assumption here.

24 Q. And based on your works, have you come to a  
25 conclusion as to the lost earnings that Yaron's death

1 has caused?

2 A. Well, my -- using this conservative career  
3 scenario, my conclusion was that the -- the losses in  
4 income would have totaled 1,273,028. That's the way  
5 that figures in dollars.

6 Q. That's American dollars?

7 A. That's American dollars.

8 Q. Now is that discounted? Is that after you've done  
9 your discounting?

10 A. That's the present value of the last stream of his  
11 earnings.

12 Q. Okay. So, in other words, that's what would be  
13 needed in a bank account or annuity such that funds  
14 could be paid to replace his income?

15 A. That's right.

16 Q. Such that at the time --

17 A. His income plus his pension, as well, yes.

18 MR. STRACHMAN: Based on that, your Honor,  
19 I'd ask that Exhibit 7 be admitted as a full exhibit.

20 THE COURT: Did you say Exhibit 7(b)?

21 MR. STRACHMAN: 7, your Honor.

22 THE COURT: 7.

23 MR. STRACHMAN: And that is Doctor  
24 Ziderman's report.

25 THE COURT: Is it Exhibit 6?

1 MR. STRACHMAN: I apologize. His CV was --  
2 correct, it's number 6, your Honor.

3 THE COURT: Granted as to Exhibit 6.

4 MR. STRACHMAN: Thank you.

5 | (Plaintiff's Exhibit 6 was admitted as a full exhibit.)

6 Q. Now in addition to the report that you did, there  
7 is prepared a supplemental report?

8 A. Yes.

9 Q. And that's included along with Exhibit 6 labeled a  
10 note on the economic cost of lost parental services?

11 A. Yes.

12 Q. Okay. And you were asked by me to come up with a  
13 economic determination as to the lost services caused  
14 to Dvir and Yishai as a result of their father's death.  
15 Could you describe what you did in coming up with that  
16 calculation?

17 A. Well, of course, there can't be any substitute for  
18 the care and love and loss of a parent, but we tried to  
19 estimate what would be the market value of these  
20 services. Now, the -- there are two ways in which you  
21 could do it. The first way was simply to list all of  
22 these services and then try to find experts that would  
23 provide these sort of services.

24 Q. When you say services, what do you mean? What  
25 kinds of things?

1 A. Well, let's give some examples. Getting kids  
2 ready for school, laundry, helping them with homework,  
3 school assignments, sitting with them, giving them  
4 advice, career path of what to study at school,  
5 attending meetings, school meetings with teachers, and  
6 so on. Now, there is no one occupation that provides  
7 these, so I couldn't go to any particular experts and  
8 say how much do you charge. So one way could have been  
9 to take each of the services and try to, to -- and cost  
10 them separately, but it seemed more -- again, it seemed  
11 more re -- reasonable to look for the closest  
12 substitute, not a very good substitute, but the closest  
13 substitute. That would be to see how much somebody who  
14 works in what I call the care section in Israel, people  
15 who work with elderly, nannies, au pairs, how much they  
16 would command in the labor market, and this was the  
17 approach I adopted, and again that's a very  
18 conservative approach because they can't provide all  
19 the services that we have in mind.

20 Q. Is it fair to say that it's far cheaper to hire  
21 one person to live in with these kids and take care of  
22 these kids or if you analyze it rather that way, their  
23 grandparents are taking care of them, but if you  
24 analyze it in that way as opposed to hiring a cook to  
25 come for 2 hours a day, and hiring a chef and hiring a

1 laundry person, a driver, is that right?

2 A. That's right. It's cheaper. Clearly the services  
3 are less quality but that's obviously more practical  
4 way of going about it.

5 Q. And did you come up with a calculation as to what  
6 it would cost to have someone on a full time basis  
7 taking care of these children?

8 A. What we did was to survey a number of agencies in  
9 Israel to see what the rates they were paying and, of  
10 course, there's a whole range of rates. Somebody who's  
11 just starting off would -- most of these workers  
12 actually come from abroad, and somebody who's just  
13 arrived in Israel, not familiar with the country, with  
14 institutions, would command between 5, \$600 a month,  
15 but clearly a person of this type would not be useful.  
16 We need somebody who can take kids to school and speak  
17 to teachers. The range in this market is from about  
18 \$500 to say \$1,000. So it seemed to me that we should  
19 go to the top of the range, and I assumed indeed that  
20 the cost would be \$1,000 a month, salary costs. But  
21 there are of course many other costs involved.

22 Q. What are those?

23 A. Well, I've outlined them in Table 1 of the note I  
24 prepared, annual costs in addition to the salary costs.  
25 Of course, the work would require a vacation, holidays,

1 and we'd need replacement for that, so I put in  
2 vacation replacement.

3 Q. How much was that a year?

4 A. Well, I assumed 21 days, which is three-quarters  
5 of a monthly salary, \$750. It's usual to give these  
6 workers so-called pocket money.

7 Q. Excuse me one second, Doctor. So, in other words,  
8 when this individual would go on a vacation, you would  
9 need to hire someone to replace them for 3 weeks; is  
10 that right?

11 A. Yes, that would be -- yes.

12 Q. And then?

13 A. Then there's pocket money. That varies from 50 to  
14 a hundred Shekels a month, but I took 80 Shekels which  
15 seemed to be reliable, say \$20.00 a week, which comes  
16 out say \$1,040 a month -- a year.

17 Q. You came up with a figure for insurance, is that  
18 for health insurance?

19 A. Yes, but these aren't big figures, \$520, but it  
20 could be a bit more, bit less.

21 Q. That's a year?

22 A. Yes. Very rough figures.

23 Q. Okay. And what is the board and lodging, what is  
24 that figure that you came up with?

25 A. Well clearly we're talking about the live-in

1 arrangement and, therefore, we'd have to provide food,  
2 lodging for this worker. Again, I -- I think I -- I  
3 again surveyed a number of ----- to ask how much seemed  
4 reasonable. We took \$280 a month as a very reasonable,  
5 I think very reasonable figure for food,  
6 accommodations, so on. That gives us --

7 Q. In other words, the person who's living -- who's  
8 performing this function, the family would need to pay  
9 for their food, pay for their electricity, utilities;  
10 is that right?

11 A. That's right.

12 Q. Even living in the house?

13 A. Yes. And we could also, I think, reasonably say  
14 that the use of a room implies a cost. But we added a  
15 small amount, not the economic cost, and I think the  
16 280 figure is a very much underestimate, but I didn't  
17 want to move into areas which I was uncertain so  
18 clearly 280 would be a safe figure.

19 Q. \$280 a month?

20 A. A month. That comes out to \$3,360 a year.

21 Q. And is that where your total comes to then,  
22 \$18,011?

23 A. That's right.

24 Q. And does that figure represent the sum then that  
25 you would need to spend to have someone full time,

1 round the clock, 24 hours, 7 days a week, 52 weeks a  
2 year, to take care of these children?

3 A. Yes. That's very much a minimal sum except we  
4 made one further adjustment. I said we used what I  
5 call the top of the line in that profession, but none  
6 of the workers in that profession have much more than  
7 high school education. And, we took -- we would need  
8 somebody who could provide other services such as  
9 helping with assignments, speaking to teachers. There  
10 I thought it reasonable to add 25 percent to the  
11 monthly salary of the thousand dollars to come up with  
12 a second scenario. So I have two scenarios. One is  
13 top of the line as exists, and the second one would add  
14 25 percent to the salary. So --

15 Q. How did you come up with that premium, if you  
16 will, of 25 percent?

17 A. Well, again, you can ask how much more would a  
18 graduate earn than a non graduate. In fact, it's much  
19 more than 25 percent, that's why I feel safe with that  
20 assumption. So we have two estimate, one is \$18,010 a  
21 year, and the other one is \$21,010 a year.

22 Q. So did you calculate that sum for the -- for --  
23 how many years did you calculate that sum out for?

24 A. Well, we assumed that the services would not be  
25 required after age 18 and, therefore, as the youngest

1 child was about one year, we had 17 years of annual  
2 payments.

3 Q. Okay. And did you discount that stream of  
4 payments, or subject that stream of payments to the  
5 same discount rate you utilized in your -- in your last  
6 earnings report?

7 A. Yes, yes.

8 Q. So --

9 A. In other words, we came up with a total sum which  
10 would be enough to release an annual figure of 18,010  
11 per year for 17 years, and this appears in the second  
12 table, Table 2. The lower estimate is based upon an  
13 annual or -- excuse me, a monthly earnings of a  
14 thousand dollars, and while I call it the realistic  
15 estimate is based upon an extra 25 percent premium to  
16 the salary.

17 Q. Okay. Thank you.

18 MR. STRACHMAN: That's all, your Honor. I  
19 would ask Doctor Ziderman's supplemental report, or his  
20 note, which is also included with Exhibit 6, be  
21 admitted as a full exhibit.

22 THE COURT: Granted. We'll take our noon  
23 recess and we'll resume at two o'clock. We've gone  
24 through 2 witnesses, Mr. Strachman. I would encourage  
25 you to use some of the time during lunch hour to see if

1 we can't increase the pace. The Court will stand in  
2 recess.

3 THE CLERK: All rise.

4 (R E C E S S)

5 THE COURT: Call your next witness,  
6 Mr. Stracham.

7 MR. STRACHMAN: Thank you.

8 MEIR UNGAR, PLAINTIFF WITNESS, SWORN

9 DIRECT EXAMINATION

10 BY MR. STRACHMAN:

11 Q. Mr. Ungar, where do you live?

12 A. I live in Sharei Tikva.

13 Q. In Israel?

14 A. In Israel.

15 Q. Okay. And Yaron was your son?

16 A. Yaron was my second child. My first son, yes.

17 Q. And before we begin, I want to clarify, Yaron was  
18 an American citizen?

19 A. Yes. Yaron was born in the States while I was  
20 studying towards my Ph.D. at the University of  
21 Columbia. I -- we stayed there for a period of  
22 4 years, and then Yaron was born, and then I stayed  
23 there another year after I finished my studies,  
24 teaching at a Hebrew college. Later on we came back  
25 for sabbaticals. The second time we came back I taught

1 at the University of Houston in Texas, and Yaron  
2 studied there for his first grade, and later on we came  
3 for another couple of years to Philadelphia where I  
4 taught at the Walton School of Economics at the  
5 University of Pennsylvania. While there, Yaron studied  
6 junior high, finishing his 7th and 8th grade in  
7 Philadelphia.

8 Q. You provided to me a passport and a birth  
9 certificate and a report of the death of an American  
10 citizen; is that right?

11 A. Right, right.

12 MR. STRACHMAN: Your Honor, those are  
13 Exhibits 8, 9 and 10. We ask that they be admitted as  
14 full exhibits.

15 THE COURT: They may be so admitted.  
16 Granted.

17 (Plaintiff's Exhibits 8, 9 and 10 admitted as full  
18 exhibits)

19 Q. And, also, you and your family gave to me pictures  
20 of Yaron and his family.

21 MR. STRACHMAN: May I approach, your Honor?

22 THE COURT: You may.

23 Q. I'm showing you, sir, what has been marked as  
24 Plaintiff's Number 11 for Identification, and are these  
25 the pictures that were provided to me of the family and

1 Yaron?

2 A. Yeah. This one Amichai, --

3 MR. STRACHMAN: It's on your list,

4 A-M-I-C-H-A-I.

5 A. -- Bar Mitzvah ceremony.

6 Q. I don't want to go through them all, --

7 A. Okay.

8 Q. -- but are these the pictures that were provided  
9 to me?

10 A. Yes.

11 Q. You recognize them?

12 A. From Yaron's wedding and so forth, right.

13 MR. STRACHMAN: Your Honor, I'd ask that the  
14 pictures that had been marked as number 11 be admitted  
15 as a full exhibit.

16 THE COURT: They may be so admitted.

17 MR. STRACHMAN: Here are copies in color for  
18 the Court.

19 THE COURT: Thank you.

20 Q. Now can you tell us what kind of a boy was Yaron  
21 growing up?

22 A. Well, Yaron, I really don't know what to say.

23 There's so much to tell about him. Yaron was a great  
24 helper at home. He helped me while we were building  
25 our home, our new house. He helped me a lot in fixing

1 all kinds of things. When later on he came home, for a  
2 weekend from the dormitory he stayed in, he used to  
3 help me gardening and basically was a very good and  
4 beautiful son.

5 Q. And prior to --prior to his death, how often did  
6 you talk? How often did you see him?

7 A. While he got married, they used to come to us with  
8 his wife and later on with the children, if we have the  
9 weekend, but during the week we talked say on the phone  
10 every other day. He used to tell us about what is --  
11 about his accomplishments during the day, about the  
12 boys, about the school where he was teaching in, and so  
13 forth.

14 Q. When you said that he came to your home every  
15 other weekend, did he stay with you for the weekend?

16 A. Sure. He came over on Friday and he stayed  
17 usually until after sabbath.

18 Q. Sabbath, which -- a Saturday evening or Sunday  
19 morning?

20 A. Sometimes during vacations Sunday mornings, but  
21 during the school year until Saturday night.

22 Q. And he was 26 when he died?

23 A. It was just about before his 26th birthday.

24 Q. And even when he was married, did he come with his  
25 family to you every other weekend?

1 A. Sure.

2 Q. And how did you learn of his death?

3 A. Well, in the middle of the night the doorbell rang  
4 and they -- I didn't know what was it, so I ran out, I  
5 ran down the stairs, I called out, who is it, but I  
6 think nobody answered, so I opened the door, and there  
7 was an entire delegation of the -- from the community  
8 headed by our Rabbi and a physician, and I already  
9 guessed. I feared there's some horrible news are  
10 coming, and then they told me the terrible news.

11 Q. And what did you learn? What did they tell you?

12 A. They told me that Yaron was shot in a car, a  
13 shooting out, and then I asked what about Effie, and  
14 they told me Effie, too. So -- and then my wife  
15 shouted for me, what happened, and then I told her.

16 Q. What kind of person was Yaron? What was his  
17 personality like?

18 A. Yaron was a very bright boy. He was very much  
19 loved by his classmates. He was kind of a natural  
20 leader in his group. And he was simply usually the  
21 center of the -- of the gathering, or the center of the  
22 group.

23 Q. What about him made him the center of the  
24 attention?

25 A. Well, you could always say tests, all kinds of

1 tests, and he used to carry them out without any  
2 hesitation, and he was that kind of a guy during all  
3 his career, short career.

4 Q. And what profession did he have?

5 A. Yaron was attracted to the educational field for  
6 many years. He used to be a counsellor at scouts group  
7 in our -- in our place, and he was -- he loved very  
8 much his mates, his pupils, I mean, and also he was  
9 loved by them. And later on, when he continued to  
10 study in a rabbinical seminary, he went to an  
11 educational expedition to Russia to teach there.

12 (Phone rang)

13 THE COURT: Sorry about that interruption.  
14 Go ahead.

15 A. He went to Russia to teach up there young kids, as  
16 well. And later on, when in college, he started to  
17 study education. He was about to finish his BA degree  
18 in education, and he also finished his senior teachers  
19 diploma.

20 Q. And why did he -- why did he want to become a  
21 teacher?

22 A. He wanted to raise a new and better generation of  
23 kids.

24 Q. He told you that?

25 A. We talked about it all the time, yes.

1 Q. what kinds of things did he say about that?

2 A. Well, it came natural to him. He didn't have  
3 probably any other -- it was with him for a long time.  
4 He was, as he phrased, for that mission. He saw it as  
5 a mission.

6 Q. And how many children do you have?

7 A. Well, I have four children, including him.

8 Q. And he was the oldest son?

9 A. He was my second child, the oldest son.

10 Q. What role did he have in your family, in your  
11 family life together?

12 A. Well, when he grew up, when he got older,  
13 especially when he went to high school and then later  
14 on to the rabbinical seminary, he became like a  
15 spiritual leader in the family, especially to his  
16 younger siblings. They looked up to him for advice,  
17 for comfort, and they looked up at him as if he was a  
18 father.

19 Q. Can you describe your relationship with him?

20 A. Well, we did many things together, and as I said  
21 before, we used to work around the house together,  
22 gardening together. I remember one day one of the big  
23 trees tended to fall so we had to wait until he comes,  
24 after he got married, until he comes home for the  
25 second weekend to cut the tree, in order not to ruin

1 the entire garden. So 3 of us, Amichai, Yaron and  
2 myself, cut the tree and helped it fall down quickly.

3 Q. And following his -- following his murder, how did  
4 that -- how did you react to his murder?

5 A. Well, I became much more closed and nervous, and  
6 much more unhappy.

7 Q. Can you explain what you mean by that?

8 A. Well, before the murder, for example, I had a  
9 hobby of going to folk dancing about twice a week, and  
10 I love it very much, and after the murder, I simply  
11 couldn't do it any more. I stopped going to folk  
12 dancing. I felt I don't have the right to be happy.  
13 Only lately I forced myself to start again. But it's  
14 not the same. I simply don't have the joy of the life  
15 as I had before, and sometimes during the dancing I  
16 start to think about Yaron, and then I tell myself I  
17 don't have the right to do it any more.

18 Q. Any other times, specific times, that you think  
19 about him or that it affects you?

20 A. Well, in synagogue many times during the day, but  
21 especially during my prayer to God, when I pray to God  
22 and then I start to visualize the site of the  
23 happening, how the bullets of the murderers struck the  
24 car, and I start to think about Yaron being hit, not  
25 knowing what happened to his wife and his small child,

1 Ishai, I-S-H-A-I. Ishai was with them in the car. Not  
2 knowing whether they were saved or not saved, and  
3 didn't have any idea probably, and at the time when I  
4 think about him and about Effie, who also got killed,  
5 tears start coming down my cheeks, and I can't help it.

6 Q. And did it affect your personality in any other  
7 way?

8 A. Well, I think that if before the murder my family  
9 was always in the first place, but my job was almost an  
10 equal, at an equal level. After the murder, my  
11 families, of course, not only the first place, but also  
12 the second and third, and only next comes my job. Even  
13 though I try to fulfill all my responsibilities towards  
14 my students, as before, for example when I grade the  
15 exams, I always do it the next day, and always do  
16 whatever I have to do, whatever, is related to my  
17 students, papers, seminars, et cetera, but my research  
18 simply suffers. I don't evaluate any more as I used to  
19 do it before, and my research takes a toll.

20 Q. You're a professor?

21 A. I am an associate professor.

22 Q. What subject?

23 A. In business administration, corporate finance.  
24 Specializing in corporate finance.

25 Q. Now prior to his murder, were you publishing

1 articles, writing books, doing things like that?

2 A. Well, I was publishing at the rate of let's say  
3 one and a half to two papers a year, which is  
4 considered a normal publishing rate, yes.

5 Q. Since his death in June of 1996, has that been  
6 affected?

7 A. Well, since then, 6 years has passed, and I  
8 published about 2 papers only, and probably one of them  
9 at least started to be breeded before the murder. I  
10 simply -- the publishing rate diminished to a  
11 minuscule, to a minute rate.

12 Q. And in terms of your disposition or your  
13 personality, how has the murder affected you?

14 A. Well, as I said before, I became much more closed.  
15 Many things that interested me before don't interest me  
16 so much any more, and I become more family type guy.

17 Q. Are you able to interact with other people in the  
18 same way or --

19 A. More or less force myself at least for on the  
20 outside to do my best.

21 Q. And you talked about your publishing rate. Since  
22 you were -- since the murder, have you been promoted in  
23 your job?

24 A. Not yet. I don't know if I will be promoted at  
25 this rate, but I can't help it much.

1 Q. And can you be promoted if you're not publishing?

2 A. No.

3 Q. Is that why you haven't been promoted?

4 A. Promotion in Israel, as in States, is based mainly  
5 -- I don't want to say entirely, but 95 percent on  
6 publishing.

7 Q. And without publishing, would you be able to be  
8 promoted?

9 A. No, no way.

10 Q. Now has Yaron's death affected your family life,  
11 your entire family life?

12 A. Well, we are much more concerned about our kids.  
13 We were concerned before, but now we have to know every  
14 minute where they are located and at what point. If  
15 our smaller kids who are still at home who are  
16 unmarried, if they go out, we have to know where they  
17 are, when they come home, if they are in a safe place,  
18 and before we go to sleep, we have to make sure that  
19 they are in some safe place, and my wife is really very  
20 very nervous about it, very crazy about it.

21 Q. Can you give some examples of that?

22 A. Well, she makes so many phone calls, and she  
23 drives my kids crazy about it.

24 Q. How old are they? How old are your older kids?  
25 Your younger kids who reside with you?

1 A. The younger one is 22, and the middle one Amichai  
2 is 25.

3 Q. And could you tell us why -- why did you bring  
4 this lawsuit?

5 A. Well, we felt that somebody who does such a  
6 horrible thing should pay for it. We don't want  
7 revenge because nothing can bring back Yaron and Effie.  
8 But at least we know that by helping them at least  
9 financially they might think twice before carrying out  
10 such a terrorists acts, this country and every country,  
11 especially these terrorists organizations, and if they  
12 are going to pay for their deeds they simply will stop  
13 doing that.

14 MR. STRACHMAN: Thank you. That's all, your  
15 Honor.

16 THE COURT: Mr. Ungar, how many years had  
17 your son been living continuously in Israel at the time  
18 of his death?

19 THE WITNESS: Continuously, 12 years.

20 THE COURT: Thank you. You may step down.

21 THE CLERK: Do you affirm that all the  
22 testimony you're about to give in the case now before  
23 the Court will be the truth, the whole truth and  
24 nothing but the truth, and this you do affirm under the  
25 pains and penalties of perjury?

1 THE WITNESS: I do.

2 THE CLERK: Please state and spell your name  
3 for the record.

4 THE WITNESS: My name is Judith Ungar,  
5 U-N-G-A-R.

6 JUDITH UNGAR, PLAINTIFF WITNESS, SWORN

7 DIRECT EXAMINATION

8 BY MR. STRACHMAN:

9 Q. Miss Ungar, what is your profession?

10 A. I'm a psychologist.

11 Q. You have a master's degree in psychology?.

12 A. I have a master's degree in psychology but I work  
13 in the Teachers College in Israel.

14 Q. And can you tell us what Yaron was like, what his  
15 personality was like?

16 A. I think that the most -- the things that will be  
17 most characteristic of Yaron is his happiness, his joy  
18 of life, his delight in his eyes. He was always full  
19 of life, you know, always people around him, always  
20 friends coming to him and always doing things with his  
21 friends. He was really -- he was really something  
22 else, what can I tell you. And even as a boy, when as  
23 a baby, was a healthy and happy baby. As a boy when he  
24 grew up he was always such an -- every mother would  
25 like to have a boy like him, you know. I never had

1 problems with him. He -- as a pupil, he was a good  
2 pupil. He was loved by his friends. He was a good  
3 athlete. Always winning trophies, you know, for the  
4 stuff he did. He never gave us problems, and we -- he  
5 could do it because we moved a lot, you know. When he  
6 was first grade, we moved to Houston, and it's a major  
7 thing for a boy to change, you know, environment  
8 especially in first grade, but he never complained and  
9 he got along so well. Everything was okay. We came  
10 back to Israel, he got along really good, then we took  
11 him back to Philadelphia and he managed so nicely that  
12 all his teachers loved him. It's the 8th grade when  
13 there was ceremonies there. The graduation ceremony he  
14 was delivering the valedictorian speech. Even if he  
15 was new there, relatively new, only 2 years, everybody  
16 thought of him very highly. And that was really part  
17 of him. I always like him. I can picture myself, you  
18 know, in a wedding of our friends, and he was there  
19 dancing with the crowds there, and I was looking at him  
20 and I said, this is my boy, this is Yaron. I really  
21 was proud of him because he was handsome, he was tall,  
22 blond, blue eyes, really handsome and lovable. You  
23 know, you could see the light in his eyes, always  
24 laughing, always happy, always good natured. He really  
25 was something else.

1 Q. What was your relationship with him like? Can you  
2 describe it?

3 A. Because he was a very open person, not a closed  
4 one, he was always -- we had very warm relationship and  
5 close relationships because he was open. He was always  
6 telling us what's going on with him. Even, you know,  
7 when he was in high school, he was away from home. He  
8 wasn't in a dorm. We thought he would get a better  
9 education if he'd be away from home. He came home  
10 every second weekend, and he always when he came we  
11 would always sit around the sabbath table, around the  
12 table, and all of us listen to Yaron telling stories  
13 about his friends and about the teachers and about  
14 what's going on. He was always the center of  
15 everything. He would teach us, you know, when we sit  
16 we had this custom, Saturday -- Friday night before the  
17 sabbath we have the custom to sit around the table, all  
18 of us, and sing songs, and he would teach us the new  
19 songs he started and learned in school, and he would --  
20 he would tell us the stories, and he was always -- and  
21 we had really good relationships also because we were  
22 the same -- approximately the same field. I teach the  
23 Teachers College, I work at the Teachers College, and  
24 he was taking teaching position. He would consult me  
25 and I would lend him books I had in the library, and he

1 would consult me and tell me what's going on, and  
2 telling me how he prepares his lessons, and he showed  
3 me. I was very proud to see the lessons he prepares.  
4 It was really on high level because he cooperated with  
5 his wife. His wife was illustrating the pictures and  
6 he was making up the questions of the lesson to the  
7 pupils. It was really -- we really had very close  
8 relationship.

9 Q. And can you give us any other examples of his  
10 personality or that would illustrate what his  
11 personality was like?

12 A. As I said, he was a -- he was a happy person. He  
13 was a leader in his group, and he had this thing with  
14 -- he wasn't an idealistic person. He wasn't -- he  
15 wasn't -- he didn't care for money. Money wasn't the  
16 matter for him. He wanted to give to society, to  
17 contribute to society, to be involved, not like other  
18 people who say I'm not -- I don't want to get involved.  
19 He was involved in everything he did. That's why he  
20 went to education, I think. It was a matter of  
21 idealism for him. He didn't care the salary is low.  
22 He said, I have to contribute to society, what can I do  
23 good, what can I do best, and he knew that he was very  
24 good with children, I can do best to teach them, to  
25 educate them to be good citizens, to be good persons,

1 and that's what he did, and I saw it everywhere. I can  
2 just remember, you know, the time, it was two days  
3 before his wedding, we went -- we went to the city to  
4 pick up his suit. He bought a new suit, of course, we  
5 went to the city to pick up the new suit. I was with  
6 him in the car, and before us there was a minor  
7 accident, I think, and the driver and the other driver  
8 started fighting each other, blaming each other. Yaron  
9 wanted to get out of our car and I said to him, Yaron,  
10 sit down. What are you doing? And he said, I have to  
11 go and separate them. And I said to him, are you  
12 crazy, two days before you're wedding, you stay put,  
13 don't go out, don't do anything, don't get involved,  
14 and he said, how can I not get involved, they're  
15 fighting, and he went out and he separated them. He  
16 had to be involved in everything he did. That's why he  
17 also went to Russia. It was hard on him. It wasn't  
18 easy to be in those times, I think it was 1992. I  
19 don't remember exactly the date, and it was hard on him  
20 to go and to leave everything and go to Russia for 4  
21 months, to some village over there, some city, and he  
22 did it because he thought he would be able to do  
23 something for the community, not for his community, but  
24 for the Jews in Russia. So it was very important for  
25 him to do.

1 Q. He was teaching in Russia?

2 A. He was teaching Jewish laws and things like that,  
3 stuff like that, because he went to a rabbinical  
4 college and he knew a lot, and he was teaching.

5 Q. And other than that work in Russia, did he do any  
6 other charitable work?

7 A. Oh, yes, a lot. First of all, there are things we  
8 learned about only after his death, after his murder.  
9 we -- there are things about him that he didn't even  
10 tell us. For instance, only after the murder, we  
11 learned to know that he would, every month he would --  
12 he and Effie would add their salaries and see how much  
13 they earned this month and put aside 10% from their  
14 earnings for charity. we learned to know only after  
15 the death, we learned to know that there was a student  
16 in the high school he taught in that they paid for his  
17 tuition because he was disadvantaged. He couldn't pay  
18 his tuition, and he told the principal not to tell  
19 anybody. He didn't even tell us because he knew that  
20 we will be amazed, we would be opposed to it. we  
21 didn't imagine they were -- they lived very low  
22 standard of living this time, and how can he afford  
23 also giving charity to others, but it was his point to  
24 give 10% of his earnings every month for -- for  
25 charity. He also worked with -- when he was a teacher

1 in college -- I'm sorry, when he was a teacher at the  
2 junior high where he taught, he also in the afternoons  
3 were working with counsellors of students who worked  
4 with disadvantaged pupils like you have here, like Big  
5 Brother, something like that called Big Brother, is the  
6 same program in Israel that students who want to pay  
7 low tuition they have to adopt disadvantaged child, and  
8 to meet him twice a week or so, and help him with  
9 everything they can, and Yaron was counselling those  
10 students who did it, and, you know --

11 Q. And he had been married at the time of his death  
12 for how many years?

13 A. For 3 years -- for 3 -- almost 3 years. Less than  
14 3 years.

15 Q. And what was he like -- he had 2 children, Dvir  
16 and Yishai, and what was he like as a parent?

17 A. He was, like I said, he was a good natured boy.  
18 He was a good natured father. He was -- that was his  
19 personality. You could see also the way he treated his  
20 children because he was always very calm with them,  
21 very close to them, especially to the older one. They  
22 had such a bond between them, I didn't see -- usually  
23 you see it with the mother and child, but with father  
24 and child, you seldom see it, you know, because really  
25 the father is going out to work, coming, having less

1 time, and the mother is the main one who create this  
2 bond with children, but with Yaron, especially with  
3 Yishai, especially bond with them. He always asked for  
4 father. He would cry at night, wouldn't cry mommy, he  
5 would cry daddy, daddy. And I could see them, you  
6 know, and Yaron holding Dvir, and you know when he got  
7 up from sleep, they were always for, I don't know, a  
8 few minutes, more than a few minutes, cranky, so he  
9 would always say to us, don't talk to him now, wait a  
10 second, he would take him on his hands and sooth him  
11 and sit with him quietly until he woke up and never he  
12 -- Effie, too, they were both special couple. They got  
13 -- they never raised their voice on the children, even  
14 really he's not most peaceful quiet boy in the world.  
15 If he did something wrong, they would never spank him,  
16 would never raise their voice at him. They would sit  
17 and say, Dvir, you didn't -- what you did wasn't right,  
18 you know, explaining to him was something -- he was, I  
19 don't know, I wasn't used to such way of handling  
20 children maybe because he was the mother and father,  
21 but I think it's because of his personality that he was  
22 like that.

23 Q. What kinds of things -- were there any other kinds  
24 of things that he did as a father with the children?  
25 Any specific things?

1 A. He did everything with them. He like -- well, he  
2 bathed them and he diapers them and he crawled on the  
3 floor with them, and he did everything with them. He  
4 was really, you know, when he was with them he was like  
5 a baby. He was doing everything with them. He loved  
6 hiking around, you know, the country. He took them  
7 even when they were tiny little babies, they would put  
8 them on their back, backpack --

9 Q. Backpack.

10 A. Backpack, and they going all around and taking  
11 them everywhere they went.

12 Q. And how -- do you know if he was involved with  
13 their care when they were babies? Did he feed them or  
14 did he bathe them?

15 A. Sure, sure, all the time. He was equal to Effie,  
16 you know. There was not a thing that Effie could do  
17 and he couldn't do, you know. He was taking care of  
18 the children the way Effie did. They both were, they  
19 both were busy. He maybe was more busier than Effie  
20 because she -- part of her job did at home, but they  
21 both took care equal parts in the household. He did  
22 everything with the kids. Except of nursing the  
23 babies, he did everything with them.

24 Q. And how did you react to his death? How -- how  
25 did you feel following his death?

1 A. It's very hard to -- to convey the feelings  
2 because, you feel like the world is coming down on you,  
3 caving on you. You feel like the world is going to  
4 stop now. Nothing will happen, you know, from now on.  
5 Everything is going to stop. You can't bear it. You  
6 know, I think for a mother to -- for a parent -- for a  
7 mother to lose a child, it's the most horrible thing  
8 that can happen. People, you know, I lost my father I  
9 loved very much, but he came of age not long ago, but  
10 he was over 80 already, and it was very painful, but I  
11 didn't feel like all the world is coming apart, but  
12 when you lose a child, when you lose a son, I -- it's a  
13 terrible thing. I can't explain it. But on top of it  
14 you lose it in such a way, such a cold, cruel and  
15 horrible way, you know. It's not that he died of an  
16 illness. In one minute he was a happy lively man with  
17 his wife, you know. I remember the last time I spoke  
18 to him it was two days before he was killed. We were  
19 with daughter in Jerusalem for her birthday, and I've  
20 talked to him over the phone, and he told me, mommy,  
21 I'm so happy, I'm really happy, you know. He had the  
22 hobby of carpentering, and he started a new course in  
23 carpentry, and the vacation just started, he finished  
24 the school year, and the vacation just started, and he  
25 said, you know mommy, I'm so happy, I'm -- just I'm

1 happy. It went so good for him. He had a lovely wife  
2 he loved so much. He had 2 great children and  
3 suddenly, suddenly such a cruel death. You know you  
4 think everything is going to stop. But everything  
5 continues, you know, the way it's -- it's not like  
6 that. And I had a decision to make. And usually I'm a  
7 very rational person, and I had a decision to make. I  
8 could do the easiest -- the easiest thing to do was to  
9 go in bed and to stay in bed and forget about the  
10 world, you know, to be wrapped up in my soul, but I  
11 have two other young -- I had then, my daughter -- my  
12 youngest daughter was 16, my son was 19, and I had a  
13 married daughter with grandchildren, and I had parents,  
14 and I had a husband I have to think of, and I had made  
15 a rational decision to go on with my life. Not to --  
16 not to stop anything. To do -- to go on for them. And  
17 I'm sure that Yaron, you know, would want me to do the  
18 same, to go on and not to let everything pass by, or  
19 something like that. So I made the decision to go on.  
20 I can't say that he didn't -- you know, when somebody  
21 looks at me from the outside, you can say, well, she's  
22 okay, she's working, she has a family, she's going out,  
23 she's going to weddings, she's going -- she's doing  
24 everything that every normal person does, but I know  
25 it's not the same, you know, because in the back of my

1 mind, you know, in the heart, you always have this  
2 terrible weight, you know. whatever you do, it's  
3 always in the back of your mind. whatever I do, it's  
4 never -- I don't -- you can't never enjoy anything you  
5 do, even happy stuff, because Yaron is there all the  
6 time, you know. It's like somebody, if you are sick  
7 and you don't have any taste buds any more, you  
8 continue on eating as usual, but you don't taste what  
9 you're eating. That's the way it is. That's the way  
10 it is.

11 Q. Have you -- did you change any of your activities  
12 in any way? You said you went to work. Any other --  
13 any changes in your activities or your daily life?

14 A. The main thing I do, the same as I did before,  
15 yeah. The other small stuff, you know, the small, like  
16 I used to go to a sing-a-long to a choir, I don't go  
17 any more, you know, and holidays, when we sit around  
18 the tables we don't sing any more like we used to.  
19 Every holiday is a very tough time for us, you know,  
20 when Yaron is not there. And every -- you know, every  
21 thing, happy thing, it's -- the sorrow is there. When  
22 Dvir -- when Yishai just started walking his first  
23 step, we always thought Yaron couldn't see. When --  
24 you know, everything, when my daughter gave birth to  
25 twin daughters, I couldn't be happy because Yaron

1 wasn't there. So I didn't change anything but, you  
2 know, there are, as I say, small things. But usually  
3 you can't tell, but it's there all the time.

4 Q. And how did it affect -- how did it impact your  
5 family, your family life?

6 A. I think that all my family did the same as I did,  
7 you know, they continue. They continue. But it has --  
8 it has its toll. We are all more nervous. I know I'm  
9 very nervous. I can't help it. And I don't know, I  
10 really -- I know that everybody, like my son, my little  
11 daughter, they always -- they pretend that everything  
12 is okay. Just be -- we are okay, don't worry about us,  
13 we are okay. But I'm -- it's not -- it's not  
14 manifested in anything that -- complete thing that I  
15 can say, you know. It's not they dropped out of school  
16 or something, didn't even go to concerting, but it's  
17 there all the time, this heavy feeling, you know. It's  
18 there all the time.

19 Q. Are there any particular things that make you  
20 think about his death or remind you of him?

21 A. Everything. When I hear -- when I hear singing, a  
22 song he loved. When I go in the street, suddenly I see  
23 a young couple, you know, she's black hair, he's blond,  
24 and then child with them, I always think that's Yaron.  
25 I see his friends, you know, raising family, having

1 already 3 kids, 4 kids, and I think of him. I think of  
2 him all the time, especially on holidays when, you  
3 know, we used to do -- we build up, you know, holidays  
4 we have to build this Sukka, I don't know what -- how  
5 to call it in English, but he was always there, you  
6 know, decorating it. He loved to decorate it. He's  
7 not there, and everything, everything, Hanukkah,  
8 lighting candles, he would always be there and sing.  
9 He's not there.

10 Q. How do you -- how were the kids, Dvir and Yishai,  
11 impacted? Did you notice an impact on them?

12 A. They were too small to remember. It's not like  
13 you know, like even 4 or 5 year old when the parents  
14 are gone, they still have some memories of them. They  
15 was not even 2 years old, less than 2 years old.  
16 Yishai was 10 months old. So it's hard to say if it's  
17 impacted them. I don't know. I really don't know.  
18 It's hard to say. But what pains me the most is that  
19 they didn't know them. They don't remember. It pains  
20 me that they don't remember them, because they were  
21 such wonderful people, you know. I know when I grew  
22 up, it's my parents' house, was always the pictures of  
23 my grandparents who perished at the Holocaust, and  
24 there's pictures, I would look at them. I knew they  
25 were my grandparents but I didn't have any emotional

1 attachment to them. I know they're my grandparents,  
2 okay. I'm afraid that's the same feeling the children  
3 have towards their parents because they know all the  
4 stories, they know the pictures, they know what's  
5 happened, but it's just pictures for them. It pains me  
6 because they lost wonderful parents. I don't know,  
7 maybe in the long run, if I'm doing -- if I'm thinking  
8 of it as psychology, I'm sure that in the long run it  
9 will affect them, but I don't want to refer it as a  
10 psychologist, so that's it.

11 Q. Now following their deaths, were there any  
12 particular ways that they were memorialized by their  
13 friends or by their family? I'm talking about Yaron  
14 and Efrat.

15 A. I don't understand the question. What do you  
16 mean?

17 MR. STACHMAN: May I approach the witness,  
18 your Honor?

19 THE COURT: You may.

20 A. Memorize?

21 Q. My English isn't too good. I'm sorry.

22 A. No. I am too emotional to --

23 Q. I'd like to show you --

24 A. Yeah, yeah, okay.

25 Q. -- picture -- this is a picture --

1 A. Yeah, yeah, memorized.

2 Q. -- in the packet number 11, could you tell us what  
3 this picture is?

4 A. Yes. I said Yaron had many friends. wherever he  
5 went, wherever he was, he had these friends, you know,  
6 from high school and then from the rabbinical college,  
7 and everywhere, you know, where we lived, everywhere he  
8 has this circle of friends. When Yaron was murdered,  
9 his friends decided to build a monument in the place  
10 that the murder had occurred, and this is the monument,  
11 and we dedicated it. It's not only the monument, it's  
12 also a forest. Well, in Israel you don't have forests.  
13 It's a real -- it's a small forest, let's say. This is  
14 the monument and the small forest. They both like --  
15 it's all dedicated in the memory of Yaron. His friends  
16 also published -- we have two -- we have others. Maybe  
17 you don't have them, two pamphlets, books, booklets in  
18 his memory. Two of his friends published and one  
19 pupils of high school published in memory -- memorial  
20 booklets on their behalf. They did it themselves.  
21 It's not a family, and they -- it's their friends wrote  
22 here, things about them, you know, paragraphs about  
23 them, and we have also many many boys that were born  
24 first to the family and also to his friends that are  
25 called after him. That are called Yaron, either Yaron

1 or combination of the name Yaron and Effie, and the  
2 frat, they, they -- there are at least I think 10 boys  
3 that I know of that are called after them, are named  
4 after them, yeah, are named after them, at least 10,  
5 and there are also others -- where we live, it's the  
6 place we live in, --

7 (phone rings)

8 THE COURT: Excuse me.

9 A. It's a place we live in, we have playground for  
10 the children that is named after them, and I know in  
11 the -- it's a college -- it's a high school that he  
12 taught, he was a teacher there, they named a teaching  
13 college hall after on his name. So we have many, and  
14 also I don't know if we have -- you know, his friends  
15 come over to us. In the beginning they used to come  
16 every month, for we had a meeting in our house every  
17 month, the first year after the murder, and we would  
18 gather together, and they would come and lecture and  
19 gave a lectures either in topic of education or on  
20 Jewish studies. We would -- he would give this  
21 lecture. That was at the first year we would gather  
22 his friends, like 30 friends would come every month.  
23 The second year we did it less, and now lately the last  
24 years we do it like 3 or 4 times a year, they gather by  
25 us and we have a lecture on his memories and we have a

1 get-together in talking everybody, what's new, who got  
2 engaged, who got married, who had children. Now  
3 everybody is married already and, --

4 Q. When was the last time you had one of those  
5 lectures?

6 A. It was just after Passover, I think.

7 Q. In the spring?

8 A. Yeah.

9 Q. Okay. And how many people come to those lectures?

10 A. About, at the beginning, there were more than 30.

11 At the beginning there were much more. Now it's very

12 hard for them to come because they're spread all over

13 Israel, you know, they don't live in one place, they

14 live all over, so they come, about 30 people come.

15 Sometimes they come with the wife, and they come, you

16 know, and they also call us, you know, and before

17 every -- before every holiday they call us to say to

18 us, you know, happy holidays, and they say they have a

19 child, they call us to say I had a daughter, I had a

20 son, and we -- they're always in connection with us.

21 They're always staying in touch with us.

22 Q. And what you described before is the memorial  
23 book, is this what's been marked as Exhibit 18?

24 A. This is the memorial book the friends published.

25 Q. His friends put this together?

1 A. Put this together, put the pictures, and also the  
2 paintings of Effie's paintings.

3 Q. Effie did them?

4 A. Yes.

5 MR. STRACHMAN: Your Honor, I'd like to have  
6 this marked as Exhibit 18. This is not in the package.

7 THE COURT: It may be so marked.

8 THE COURT: Thank you.

9 (Plaintiff's Exhibit 18 was admitted as a full  
10 exhibit.)

11 THE COURT: You may step down. Thank you.

12 THE CLERK: Do you affirm that all the  
13 testimony you are about to give in the case now before  
14 the Court will be the truth, the whole truth and  
15 nothing but the truth, and this you do affirm under the  
16 pains and penalties of perjury?

17 THE WITNESS: I do.

18 THE CLERK: Would you please state and spell  
19 your name for the record.

20 THE WITNESS: My name is Michal Cohen,  
21 C-O-H-E-N.

22 MICHAL COHEN, PLAINTIFF WITNESS, SWORN  
23 DIRECT EXAMINATION

24 BY MR. STRACHMAN:

25 Q. Michal, where do you live?

1 A. I live in Jerusalem, Israel.

2 Q. Okay. And you are Yaron's older sister?

3 A. I'm Yaron's elder sister. I was 3 years old when  
4 Yaron was born.

5 Q. And do you live in America together?

6 A. Yeah, we were together. I really don't remember a  
7 time without Yaron. We were always together. We moved  
8 between a lot of towns and a lot of places, so the one  
9 constant was us being together. We were childhood  
10 friends. I remember how we were these brave detectives  
11 and we used to solve mysteries together, how we went up  
12 on trees, we just pretended that we were on desert  
13 island and seeking for planes, and we have all these  
14 childhood things that we did together. I remember how  
15 we used to sneak onto the porch after the curfew time,  
16 to peak and see the TV. It was just growing up  
17 together.

18 Q. Did you live in the same room at some point  
19 together?

20 A. Yeah, yeah. We were roommates, and it really made  
21 a good connection. We used to talk about the day  
22 before we fell asleep, and he was a nice brother to be  
23 with.

24 Q. And when you got older, what kind relationship did  
25 you have?

1 A. Well, as we grew older, we became friends. There  
2 was this kind of bond and trust between us so that we  
3 could talk about everything. I remember, I was already  
4 married, and Yaron used to come to me for advice about  
5 his girl friends, about his future, and even when he  
6 met Effie, Efrat, I remember him coming over and  
7 showing us the photographs and like looking for my  
8 approval, is she okay? what do you think? It was  
9 really touching.

10 Q. Did you have any common interests?

11 A. Yeah, we liked the same songs, and I liked science  
12 fiction books, so I taught him, I introduced him to  
13 science fiction, so he loved it, too. I remember that  
14 after he was murdered, my parents brought me this book  
15 that was by his bedside. They saw it was science  
16 fiction so right away they brought it to me and I read  
17 this book and got to the middle of the book and I saw  
18 his book mark in there, and it was really a great shock  
19 because I knew that this is where he came to, and he  
20 would never ever read ahead of this place. It was just  
21 terrible.

22 Q. And when he got married, did you still remain  
23 close?

24 A. Yup. We were very close. He used to call me, I  
25 used to call him. I remember after Dvir was born,

1 Effie was still in the hospital and I went with him  
2 shopping. We went to buy baby clothes and bottles, and  
3 I showed him what kind of detergent he should buy for  
4 the baby clothes. I remember him saying to me, Michal,  
5 I'm so lucky to have you as my sister, but little did  
6 he know that I was really lucky to have him. I'm  
7 sorry.

8 Q. When was the last time you spoke with him?

9 A. Well, it was -- it was about a week before the  
10 murder. We talked over the phone and I remember him  
11 telling me how proud he was. He finished this library  
12 he was building. He loved to build things with his  
13 hands so he built this library and was proud of how  
14 good it came out. And two days before the murder it  
15 was my 29th birthday, and my parents came over for the  
16 weekend to celebrate my birthday, and he was calling me  
17 to congratulate me, but I couldn't come to the phone.  
18 My mother talked to him and I told her, tell him I'll  
19 call him in a couple of days, there's no big hurry, and  
20 I missed the last chance for me to speak with my  
21 brother.

22 Q. When was the last -- excuse me. How did you react  
23 to his death?

24 A. Well, it's really very hard, as you see. I'm very  
25 -- I'm very emotional. Especially after the death, I

1 became very emotional. Every small thing that happens  
2 I take it hard. My family is very mathematicalized and  
3 they try to hide everything inside, and that's one way  
4 to take the grief, and I'm very emotional, and it's  
5 hard. I gave birth a couple of years ago to twins, and  
6 it should have been the happiest day of my life, and it  
7 was happy, but I was thinking how sad it is Yaron isn't  
8 here, and that the twins won't be able to see this  
9 wonderful lovely crazy uncle who could crawl with them  
10 and sing with them and jump with them and just teach  
11 them, and that's hard. It's also hard for my -- I have  
12 two daughters who were 2 and 4 at the time of the  
13 death, and how can I raise them when they ask me,  
14 mommy, are you going to die? When are you going to  
15 die? Usually I see -- my friends tell their children,  
16 oh, you'll be a grandparent when I'll die. You don't  
17 have to worry. I can't tell them that. They see their  
18 cousins that are orphans. They have no father and  
19 mother, and what should I tell my kid. How can I raise  
20 them to be -- to know that we'll be there. And it's  
21 hard.

22 Q. Following his death, did you -- was there any  
23 change in your activities or your lifestyle?

24 A. Well, there -- there are some things it changes.  
25 Well first of all. I called -- my twins are named

1 after one of Yaron and one after Efrat, so every day  
2 when I talk to them and I see them I remember Yaron and  
3 Effie. And just day-to-day things, I walk in a mall, I  
4 hear his favorite song, I just get paralyzed. I have  
5 to snap myself back. Or seeing in the distance a tall  
6 blond guy, I know my head tells me it's not Yaron, but  
7 for just a split second my heart says maybe it's him.  
8 Even if it's illogical, it's always there.

9 Q. And how has it impacted your parents, your family?  
10 Have you been able to observe how it affects them?

11 A. Yeah. Since I'm living with my husband and kids,  
12 I see and I come a lot to my parents' house, and every  
13 other weekend we're there, with Dvir and Yishai. I can  
14 see from the inside how it's affected the household.  
15 How everybody is so nervous. They don't take out  
16 anything. Everybody is keeping it inside because it  
17 doesn't want the other one to get hurt. So it's like  
18 walking on egg shells. My brother is a big guy  
19 already, but my mother has to know where he is, and  
20 it's really tense, really tense. Everybody is nervous.  
21 Every petty thing becomes this major issue, and they  
22 weren't like that before. They were just a happy  
23 family, singing, laughing, and it's not like that any  
24 more.

25 Q. Do you go to your parents on the weekends?

1 A. Yeah, yeah. We try to make it a point to be there  
2 every time. Dvir and Yishai are there every other  
3 weekend so that we'll be together. Our kids are  
4 practically the same age and they play together, and --

5 Q. Is that for the sabbath?

6 A. Yes.

7 Q. You stay overnight there?

8 A. For the whole weekend, from Friday until Sunday  
9 night, yeah.

10 MR. STRACHMAN: Thank you.

11 THE COURT: You may step down. Thank you.

12 THE CLERK: Do you affirm that all the  
13 testimony you are about to give in the case now before  
14 the Court will be the truth, the whole truth and  
15 nothing but the truth, and this you do affirm under the  
16 pain and penalties of perjury?

17 THE WITNESS: I do.

18 THE CLERK: And will you please state your  
19 name for the record?

20 THE WITNESS: Amichai Ungar, A-M-I-C-H-A-I,  
21 U-N-G-A-R.

22 AMICHAI UNGAR, PLAINTIFF WITNESS, SWORN

23 DIRECT EXAMINATION

24 BY MR. STRACHMAN:

25 Q. Amichai, how old are you?

1 A I'm 25 years old.

2 Q. And do you live with your parents?

3 A. I live with my parents, yes.

4 Q. Okay. And like your brother, you're an American  
5 citizen?

6 A. I am. I was born in Houston, Texas.

7 Q. And do you work or go school?

8 A. I just graduated. I got my bachelor's degree in  
9 computer science. I finished last test and I'm working  
10 for 2 years in a computer company.

11 Q. And how many years different were there between  
12 you and your brother?

13 A. There are 6 years difference between us.

14 Q. And how did you learn about his murder?

15 A. I wasn't at home when it happened, and it became  
16 that I was the last one to know. My parents couldn't  
17 reach me. They didn't know where I was. So I started  
18 the day, it was more than 6 hours after it happened,  
19 everybody already knew, and I was with my friends, and  
20 then someone called me out and told me that Yaron has  
21 died, and the first question I asked is, what with  
22 Effie? And he said he didn't know. He didn't have any  
23 information. I was shocked at the moment. I didn't  
24 know what to think about, and I went home with my  
25 friends, I started hitchhiking home, and on the way on

1 the radio I heard that there was a gunshot, and two  
2 people were killed, and they said Yaron and Effie. And  
3 that's the way I heard that also my brother and his  
4 wife were killed, by the radio.

5 Q. What kind of relationship did you have with your  
6 brother? Can you describe it?

7 A. Umn, he was kind of my hero. My big brother, tall  
8 one, strong, good in sports. I was the little child  
9 that look up to him, and he was something of a  
10 protector of mine, physical protector and mental  
11 protector. I have an example for that. When I was  
12 something like 3, or I think 4 years old, I went to,  
13 with his friends, they played soccer, and I went to --  
14 he took me with him. I sat on the grass and watched  
15 them, and they played, and suddenly a big dog came from  
16 nowhere and knocked me down to the grass, and he stood  
17 above me, and I don't know if I called him, or he saw  
18 it, and he come running and he kicked the dog off.  
19 Something -- maybe it's every brother would do that,  
20 but this is something from my childhood that I  
21 remember, and also after I told that to Dvir and  
22 Yishai, after it happened, of course, it's a story that  
23 they very liked to hear, how their father is a  
24 protective father. This is the big brother that I had,  
25 that I know, that I can rely on, can help me if I'm in

1 trouble, come and rescue me, and also a mental  
2 protector. When I was 13 years old, I just was on  
3 vacation from school, and he wrote me a letter. I have  
4 here something. I translated some of it. I was on  
5 vacation, and he was very afraid of my -- how would I  
6 be in the vacation, so I want to read a little bit from  
7 something he wrote me. "Dear Brother, hi: How are  
8 you? How is the vacation? Are you bored yet? I  
9 decided to write to you because I'm worried. Why am I  
10 worried? I'll explain to you with an example. When  
11 you take a delicate pot and heat it up to a high  
12 temperature, you cannot put it suddenly in cold water.  
13 This sudden change will make it break. What does this  
14 have to do with you? During school, you have a daily  
15 schedule and suddenly comes vacation, you shouldn't  
16 make a sudden change like that delicate pot. You  
17 should still make a point to learn a little each day.  
18 Don't be a Doctor Jekyll during school and then  
19 Mr. Hyde on vacation. And it continues, and then he  
20 signs love and kisses to all. Yaron".

21 Q. Is that letter published somewhere?

22 A. Yeah. Nobody knew about this letter. It's  
23 something that he wrote to me. I got it, I read it. I  
24 hope I worked upon it. But it was in my drawer, and  
25 nobody knew about it. After it happened, when all

1 friends and family came to us, I took it out and I  
2 showed it the first time to my parents and to the  
3 friends, and I took it as a personal letter from a big  
4 brother to his little brother, but they also look at  
5 the things that people can -- little children can learn  
6 about that, because it was in the beginning for me, but  
7 every child that is on vacation can take the points  
8 from that note and look at it as it was written to him.  
9 So it was published in also some newspapers, but also  
10 in the youth group that he was teaching there.  
11 Everyone that got on vacation got a copy of this letter  
12 and they taught people about it.

13 Q. That was just an excerpt that you read to us; is  
14 that right?

15 A. Yeah. That's without the personal things.

16 Q. And following his death, how did you react to his  
17 death? How did you experience it?

18 A. I -- I had to go on with my life, but things  
19 aren't the same. Now when Dvir and Yishai come to us  
20 every other weekend, my job is to -- I'm the one that  
21 is more taking them to -- I bathe them and I put them  
22 to sleep, and many times I'm there when the lights are  
23 off, I look at them and I sleep near them, and I think  
24 that it's not my job to be -- I'm not supposed to be  
25 there. The one that's supposed to be there tucking

1 them to bed and closing the window and seeing that  
2 they're okay is the father and mother. I'm only the  
3 uncle. I only need to play with them once, I don't  
4 know, but now I have to be also when it's our place, I  
5 also need to be also a father and mother to see that  
6 they're okay, not only to play with them.

7 Q. How has the death affected your parents?

8 A. Well, very tense family now after it happens. If  
9 something falls, suddenly we all jump. We shout more  
10 at each other. We're very tense. I'm getting 26 in  
11 some months and still if I'm late home, I know that my  
12 mother doesn't go to sleep until I'm home, and she's  
13 calling me wherever I am, and it's very hard. It's  
14 frustrating because you a grownup person, but you have  
15 to tell every moment where you are, what are you going  
16 to do. When I go to travel, I need to think everything  
17 twice. Before I could jump and run on the hills, and  
18 not think. Now I need to think, wait a minute, if  
19 something were to happen, now I can let myself do less  
20 things because I can't let my family suffer twice.  
21 They've suffered enough, and enough, and I can't let  
22 them lose another son.

23 Q. Any things you do differently now following his  
24 death than you did before?

25 A. A lot of black humor after it happened. I need to

1 be responsible of Dvir and Yishai, so if on a weekends  
2 my friends go somewhere, I can't go with them because I  
3 need to be first with Dvir and Yishai and help them and  
4 be with them, and only after they go to sleep I can see  
5 if I can take time to myself and not before.

6 Everything in -- for example, I think my first time I  
7 was at a wedding of my friends after it happened, happy  
8 occasion, and everyone was happy and we all dancing,  
9 and suddenly I saw the one that got married, my friend,  
10 dancing with his brother, and I couldn't dance. I went  
11 over to sit and cried, and I knew that this thing, I  
12 won't ever have. I won't have my brother dance with me  
13 in my wedding, something that I can only dream of. And  
14 another thing is this, the first time that we all  
15 rationale, all of my family, and this is the first time  
16 I think my parents hear me talk about it, because I  
17 know that it's very hard to express your feelings, even  
18 if it would make you feel better, if you know that what  
19 you're saying would help people that you love. And  
20 that's why for more than 6 years, I need to be at least  
21 me. I can't be -- I need to be a rock that I'm okay.  
22 I'm not -- I should continue because I know if I  
23 express my real feelings and it's hard also for me, I  
24 would hurt my family, and I prefer to be with my soul,  
25 and with myself, and deal with it inside of me even

1 though I guess it's not so healthy and easy, but it's  
2 better than to hurt the people that you love.

3 Q. Okay. Thank you.

4 THE COURT: You may step down. We'll take  
5 our afternoon recess.

6 THE CLERK: All rise.

7 (R E C E S S)

8 THE COURT: Call your next witness,  
9 Mr.

10 THE CLERK: Do you affirm that all of the  
11 testimony you are about to give in the case now before  
12 the Court will be the truth, the whole truth, and  
13 nothing but the truth, and this you do affirm under the  
14 pains and penalties of perjury?

15 THE WITNESS: Yes I do.

16 THE CLERK: Could you please state and spell  
17 your name for the record, please.

18 THE WITNESS: Daphne Ungar, D-A-P-H-N-E  
19 U-N-G-A-R.

20 DAPHNE UNGAR, PLAINTIFF WITNESS, SWORN

21 DIRECT EXAMINATION

22 BY MR. STRACHMAN:

23 Q. Daphne, how old are you?

24 A. I'm 22.

25 Q. And you live with your parents?

1 A. Yes, in Sharei Tikva.

2 Q. And how many years difference are there between  
3 you and Yaron?

4 A. 6 years apart. I was a -- I'm sorry. 9 years  
5 apart. I was -- when I was born, Yaron was 9, and he  
6 always was my great big brother. I mean, other brother  
7 is 3 years older than me, but Yaron was my really big  
8 brother, and always I remember him as a big protecting  
9 brother. One of my first memories in life was when I  
10 was a child, I was about 3 years old, I was at  
11 kindergarten and I fell off the swing and I cut my  
12 chin, and Yaron came and he took me, and he tried to  
13 calm me, and he was with me. He took me to the  
14 hospital. They had to put stitches, and he just took  
15 care of me and promised me everything will be all  
16 right, and don't need to worry, and that is the image I  
17 have of Yaron to be there to protect me, there to make  
18 sure I'm all right.

19 Q. What was he like as a person?

20 A. I think the main thing, when you recall Yaron, the  
21 main thing you think of is the smile. He had the  
22 everlasting smile on his face. He always made jokes.  
23 He always laugh with us, tell us funny stories, and I  
24 have in my room poster he gave to me as present on my  
25 birthday. Maybe I was 10 years old then, a poster with

1 it has a picture of a clown, and it is written there if  
2 you meet someone without a smile, give them one of your  
3 own as a gift. And really that characterized Yaron,  
4 always smiling and always trying to keep everyone  
5 happy. And he was a very -- he was a person that  
6 everybody would be attracted to. Magnetized by his  
7 power and his happiness. And one of the things that  
8 hurts me the most when I think of Yaron is that I  
9 really knew him only as a child, because I was 16 when  
10 he was murdered, and I had the connection with him like  
11 a little child to her big brother, but I haven't had  
12 the chance to know him as an adult. I was robbed of  
13 the chance to meet him, to be a friend of him, to talk  
14 to him eye-by-eye because when I was already an adult  
15 he wasn't there. And because after the murder I heard  
16 from his friends and from family so much stories about  
17 Yaron, I knew the big thing I have missed, because I  
18 didn't know him that way. I knew him in a different  
19 way and didn't have the chance to know him that way.

20 Q. After his death, after his murder, how did you --  
21 how did you react to his murder? Any things that you  
22 did or didn't do because of that, because he was  
23 murdered?

24 A. Well, it has an impact on your life that is very  
25 hard to explain. It's not -- I had a sudden urge to

1 continue talking with Yaron. I used to have a  
2 conversation everytime before I went to sleep with his  
3 picture, and he wasn't really answering me, but I used  
4 to tell him what's going on, and I wrote a letters to  
5 him and to Effie. I told him -- told them, all kinds  
6 of things that happens in our life, especially things  
7 that changed in Yishai's field, when Yishai had walked  
8 his first step, and Yaron and Effie weren't there to  
9 see it. I felt I have to let them know what happened.  
10 And even though they may be looking from the sky down  
11 at us and seeing it, it's -- I felt I must tell them  
12 the news, and they're missing a lot down here. They're  
13 missing their beautiful child growing up, and it's a  
14 pity.

15 Q. And are there any ways, any other ways that you  
16 feel the loss or you experience the loss of Yaron?

17 A. Yes. It comes to you all the time. Even when not  
18 expected. Me and Yaron were alike in many kinds of  
19 ways. Many ways. we liked the same food, and  
20 sometimes just sit and eat my favorite snack, and it  
21 was Yaron's favorite snack, too, and keep reminding me  
22 Yaron liked it, and when we used to sit together when  
23 he was over us for the weekend, and we gave Dvir, was a  
24 little boy, we gave him that snack, and we both would  
25 be racing who would take most of the food out and eat

1 most because we both loved it very much. And you  
2 remember him all of the time just hearing a song over  
3 the radio and reminded that Yaron liked the song. Even  
4 when there was a new song on the radio and it's just  
5 some singer that sings about her boyfriend that leaves  
6 her and she said, oh, why did you go, and to my mind  
7 "why did you go" have a different meaning. I suddenly  
8 think of Yaron, and how he have left us. It comes to  
9 you all the time. It's not -- it's not that we always  
10 walk around in deep sorrow but in every act that we do  
11 we have this on the background of our mind reminding us  
12 all the time what have happened.

13 Q. And what was Yaron like as a father?

14 A. He was great. He was -- was really inspiring to  
15 see him with his children. He -- once I remember Dvir  
16 was running around our house, my parents' house, and he  
17 broke a vase that stood over there, and instead of  
18 getting angry at him or shouting at him or doing what,  
19 Yaron just took him and put him on his lap and started  
20 saying, Dvir, you know, you are a good boy, right, and  
21 good boy doesn't do things like that. And he would be  
22 so patient to him, and so loving, it would be amazing  
23 to see it.

24 THE COURT: You may step down.

25 THE CLERK: Do you affirm that all the

1 testimony you are about to give in the case now before  
2 the Court will be the truth, the whole truth and  
3 nothing but the truth, and this you do affirm under the  
4 pain and penalties of perjury?

5 THE WITNESS: I do

6 THE CLERK: Please state and spell your name  
7 for the record.

8 THE WITNESS: Uri Dasberg, D-A-S-B-E-R-G.  
9 Uri, U-R-I.

10 Q. URI DASBERG, PLAINTIFF WITNESS, SWORN  
11 DIRECT EXAMINATION

12 BY MR. STRACHMAN:

13 Q. Rabbi Dasberg, where do you live?

14 A. I live in the suburbs of Jerusalem.

15 Q. And you are Effie's father; is that  
16 right?

17 A. I'm Effie's father.

18 Q. And what kind of relationship did you have with  
19 Yaron?

20 A. I think it was a special relation. I have my  
21 grownup boy, the first born, is a little bit elder than  
22 Yaron, but when I thought about doing things together  
23 and my occupation is writing, editing books, when I  
24 thought about it, it occurred to me that I can work  
25 with Yaron much better than with any other person. It

1 happened that, of course before the murder, I was asked  
2 to edit a book, a guide for a Jewish laws for the  
3 traveler in Israel. I did it already with a book for  
4 travelers abroad outside of Israel, and in the college  
5 in which I'm working I was asked to write something  
6 like that for the traveler in Israel, but I didn't have  
7 enough time to collect all the material, all the  
8 details about such an issue, so I thought about who can  
9 help me in this work, and suddenly I found myself near  
10 Yaron, Yaron can do it, because first of all he loved  
11 very much to travel alone and in groups, so he knew the  
12 details, he knew the conditions, and he knew also the  
13 books. He was a learned person. So he could go over  
14 the books and see whatever he can see there. So I ask  
15 him, Yaron, can you help me in this work. So he  
16 thought about it, I think, a little bit, and he said  
17 okay, I'll take it. Then I told him look at the book  
18 that I wrote before, the laws for the one who travels  
19 abroad out of Israel, and this will be like the same.  
20 Every word has to be as much -- must have a source, a  
21 written source, in our -- by sages in the bible, so he  
22 said okay, I do it. Then he wrote all the chapters,  
23 and then I found out some material that is not written  
24 anywhere. For example, if you go on a trip, of course  
25 it was written in this book that if you go on a trip,

1 there are people on this trip that feel -- don't feel  
2 away from home and they are alone, they are sad, and  
3 you as a guide, you as a member of the group, must take  
4 care of them and must treat them different than in  
5 regular situations. So I asked Yaron where is this  
6 thing is written, and he looked at me and said, it's  
7 written here, pointing to his heart. So I said, Yaron,  
8 we spoke about not writing things which is not written  
9 before. He say, I can't give you material without this  
10 dittel, for example, and it is written in the book. We  
11 published later on. The day they were murdered, I'm --  
12 I was talking with Effie's wife on the phone, and it  
13 was the end of the learning year, and he had some other  
14 plans, and I thought he wouldn't be able to finish the  
15 work on time, so I asked him -- I asked Effie, tell  
16 Yaron that if he doesn't finish this work, so I do it  
17 for him, I'll finish the work, and she brought that  
18 evening the work, what he wrote, it was almost all the  
19 book, to me, and I had to finish the work, yeah. I  
20 think there was -- yeah, this is it.

21 Q. Now showing you these copies -- are these the  
22 copies of the book?

23 A. This is a copy of this guide for a traveler in  
24 Israel, two different editions with the same context  
25 from which I pointed out just now, from page 13, what

1       -- something which he was written before, what I  
2 describe before about behaving to your fellows during  
3 the trip, this is the book.

4       Q.     And how many copies of the books were published?

5       A.     I think each edition was published in 5,000 items,  
6 which is a great quantity in for such books. For  
7 example, this book about traveling outside of Israel,  
8 was published, I think, 2,000 or 3,000 times, that's  
9 all.

10      Q.     And are they distributed by the youth group that  
11 he was involved in?

12      A.     It is distributed by both, by the college in which  
13 I'm working and also the youth group where he was  
14 working asked the permission to republish it for their  
15 members.

16      Q.     And do you know if Yaron published any other  
17 books?

18      A.     Yes. It was in this attitude of combining the  
19 knowledge of the written sources, and the atmosphere  
20 which goes among the people who has to read this book,  
21 went again in another book in which -- booklet, to be  
22 more exact, that in which Effie and Yaron took jobs  
23 together. Yaron was writing and Effie was drawing.  
24 One of the most difficult things is to review things,  
25 material that you learned already, because it's boring,

1 it's dull. How can you go over a material that you  
2 read already, you studied already, and he did an  
3 excellent one about the Book of Samuel in the Bible in  
4 which a student is requested to review what he learned  
5 already but with questions which are very interesting  
6 when it makes you enjoy the learning of this -- of this  
7 study. And you look at this book, you have the desire  
8 to go over all the Book of Samuel again in order to  
9 answer the questions, to explain the pictures you see,  
10 et cetera.

11 Q. And Effie illustrated the book and he wrote it; is  
12 that right?

13 A. Effie illustrated the book and he wrote it. It's  
14 a marvelous work together of a couple who worked  
15 together. I congra -- every couple that will be able  
16 to work such a -- in such a common way.

17 Q. And the children, Dvir and Yishai, they live with  
18 you and your wife?

19 A. Dvir and Yishai live with us all the time, yes.

20 Q. And how did they deal with their parents' murder?

21 A. Sometimes they are asking questions what happened,  
22 and of course pictures of Effie and Yaron are in the  
23 house, and they're asking us, of course they love us  
24 yes, and how do they react? Do they see us? we don't  
25 hide from them anything. whatever they have to know,

1 they know. And they are calling us Abba, Eema, which  
2 means Hebrew mommy and daddy. That was because my  
3 sister -- she was not my real sister, she also grew in  
4 my parents' house after the Holocaust, and she was 60  
5 when the murder happened, and she came to us, make  
6 these boys a favor, let them call you mommy and daddy  
7 because I, a woman 60 years old, had no -- in my life I  
8 didn't have the chance to call anybody mommy and daddy,  
9 and let them have this chance. So we told our other  
10 kids when you call Dvir, tell him to go to Abba, go to  
11 daddy, go to mommy, so he'll call you also -- he'll  
12 call us also daddy and mommy and won't miss what my  
13 sister missed.

14 Q. And do -- what kinds of questions do they ask you  
15 about their parents?

16 A. Just lately, a few years ago, a few days ago, they  
17 asked is there any part of the story that we don't  
18 know? For example, Yishai said, I know I was in the  
19 hospital, because the same day when it happened, I was  
20 in Jerusalem.

21 THE COURT: Excuse me, in Jerusalem?

22 THE WITNESS: In Jerusalem. I was in  
23 Jerusalem, and when I came home, what I knew is that  
24 Dvir and Yishai should be in our home, and they were  
25 going to a wedding, and the two children are with us.

1 So I was awake, as other members of the family were  
2 asleep already, and I was waiting for them. 11:00  
3 o'clock, 11 and a half, 12 o'clock on the radio, on the  
4 TV, I heard that there was a couple who were shot, and  
5 a she baby is still -- was also in that car. So, as an  
6 optimistic person I thought this is not they because  
7 they didn't go with with a baby, and they don't have a  
8 she baby. But after awhile, I heard the make of the  
9 car on the radio, so I went to see if the two kids are  
10 in bed, and when I saw that Yishai is not there, so I  
11 shouted, Yishai is not here. And my wife woke up, and  
12 then I drove to the place where it happened, and they  
13 told me that Yishai is in the hospital. So just a few  
14 days ago, Yishai was asking me what happened there, and  
15 I told you -- I told him this story.

16 Q. And is it something that, you know, comes up every  
17 once in awhile for them or infrequently, or --

18 A. Infrequently, when we are talking about --  
19 sometimes they are talking about Abba, daddy, so we ask  
20 him who is this daddy, Abba Yaron, Yaron, or Abba Uri,  
21 so then he has to explain to whom he is referring.

22 Q. And you picked up Yishai from the hospital?

23 A. Yes, I did.

24 Q. Yourself?

25 A. Yes.

1 Q. And he wasn't injured at all?

2 A. He wasn't injured. That was a real miracle after  
3 something like 50 bullets. Effie was driving and Yaron  
4 was sitting beside Effie, and Yishai was sitting in his  
5 baby's chair behind Effie so she protected him not only  
6 through her life by nursing, et cetera, but also with  
7 her body when she was shot.

8 MR. STRACHMAN: Thank you.

9 THE CLERK: Do you affirm that all the  
10 testimony you are about to give in the case now before  
11 the Court will be the truth, the whole truth, and  
12 nothing but the truth, and this you do affirm under the  
13 pains and penalties of perjury?

14 THE WITNESS: I do.

15 THE CLERK: Please state and spell your name  
16 for the record.

17 YEHUDIT DASBERG, PLAINTIFF WITNESS, SWORN  
18 DIRECT EXAMINATION

19 BY MR. STRACHMAN:

20 THE COURT: You may proceed.

21 Q. Mrs. Dasberg, you're married to Rabbi Dasberg; is  
22 that right?

23 A. Yes.

24 Q. And the children live with you?

25 A. Yes.

1 Q. Since --

2 A. Since it happened.

3 Q. Okay. And what's -- by the way, what's your  
4 profession? Do you have a profession?

5 A. Yeah, I am a teacher. I started -- I worked as a  
6 teacher for 15 years, then I was a manufacturer, and  
7 then I was working in public relations for an  
8 institute, an educational institute, and after Effie  
9 and Yaron died I had to leave my job, I wanted to be  
10 more in the house with the children.

11 Q. And when Effie and Yaron were killed, was Effie  
12 pregnant?

13 A. Yes. A week before they were killed, she just  
14 told me that she's 2 months pregnant.

15 Q. And did -- before they were murdered, did the  
16 family live near you?

17 A. Yes. They lived about 15 minutes drive from our  
18 house, and we were on the way to Jerusalem, so whenever  
19 they were commuting to Jerusalem they would come, they  
20 would leave the children with us, like they did now on  
21 the way to their wedding. And the first year of their  
22 marriage, she was working in our neighborhood, so  
23 everyday she would come in and out, and Yaron was also  
24 quite often in our house.

25 Q. Did you have an opportunity to observe them as

1 parents?

2 A. Yes. They're very loving, and as you heard from,  
3 they were very outgoing and very warm to the kids, and  
4 very open, and very positive. They were like -- Yaron  
5 loved to run with the children on the floor, on the  
6 carpet, and once we had a discussion about the  
7 education, he said when my child grows, I will never  
8 say to him, no, you're not allowed, but I'll say why  
9 won't you do the other way. Like he built up a way of  
10 -- a method of education, and that was very important  
11 for him. All the attitude, bring children was not just  
12 raising family, it was educating them, and that was  
13 very important for him.

14 Q. What kinds of things, what kinds of activities did  
15 he do with the children?

16 A. Well anything that the father would do with a  
17 child he loves. Okay, he had Effie in the house  
18 washing the children, and diapering them and playing  
19 with them, feeding them, and the most important thing  
20 is that, okay, Yishai did not speak, so I don't know  
21 his attitude, but I do know Dvir's. One day I heard  
22 Dvir say --

23 Q. Excuse me one second. You're talking about prior  
24 to their death, Yishai was 9 months old?

25 A. Yes. Yishai was at the death he was 9 months old,

1 so before that he was even younger.

2 Q. So he wasn't speaking.

3 A. Yes. Like when they grew up a bit, so Dvir said  
4 to Yishai, remember, I asked him -- I asked him, do you  
5 remember anything from your parents? So Dvir says,  
6 Yishai, remember how I sat on daddy and you were  
7 petting mommy's cheek, so suddenly -- I know what he  
8 was talking about. So I said, do you mean this  
9 picture? He said yes, but when he saw his picture, he  
10 kind of cuddled up of the memory of how he enjoyed  
11 being hugged by his father.

12 Q. And was Dvir particularly close to his father?

13 A. Very much so. He was all the time daddy. I'll  
14 tell you about two incidents. First of all, one day  
15 Effie said to me, I don't understand -- mommy. I'm  
16 sorry, mommy, I don't understand, all the day I'm with  
17 the children, I'm doing everything with them, for them.  
18 The moment daddy comes in, daddy, daddy, they're  
19 running to him and I'm as if I'm out of here. I'm  
20 being ignored completely. And -- okay. I explain to  
21 her that's tough, that's life, that's how it's usually  
22 is. And another story that in the day when -- on the  
23 night when they were killed, the moment we heard, and  
24 we decided that we are going to the hospital to fetch  
25 Yishai from the hospital, Dvir woke up, daddy, I want

1 daddy, take me to daddy now. He was only, nearly 20  
2 years -- 20 months old, but he was talking completely,  
3 so -- and he demanded to go to daddy. He didn't  
4 mention mommy. But the next morning when they didn't  
5 come, he asked me why aren't my parents coming? He  
6 asked about both of them. Actually it was I think the  
7 first time that he actually related to the absence of  
8 the mother because the father he asked about that night  
9 before.

10 Q. And how subsequent to that, after, in other words,  
11 after their death, how have the kids -- how have the  
12 kids adjusted? How have they responded to their  
13 parents' death?

14 A. Okay. About Yishai, it's very hard to say. I  
15 just know that he was in the car for who knows how long  
16 crying because when the guy that found him, found him  
17 in a very very harsh state of crying, of suffering. So  
18 I don't know what of it is left in his soul. But that  
19 was then a trauma. Dvir, for a very long time, I can't  
20 say exactly how long, did not leave Yishai out of his  
21 sight. If Yishai crawled -- following somebody, and  
22 Dvir for a minute didn't see him, where's Yishai,  
23 where's Yishai. You know, he was edgy, looking for  
24 Yishai as if -- and he was a baby. It's unbelievable,  
25 he was not 2 years yet, but he was kind of hanging onto

1 this presence of Yishai in the area. Until today, he  
2 is kind of dependent on the fact that Yishai has to be  
3 where he is. And when Yishai goes to friends, until  
4 today, he goes with him, to the young friends. He  
5 doesn't mind to go to the younger kids, and in that  
6 age, age is very important. He goes with Yishai just  
7 to be with him.

8 About relating to the death, when he was about 5  
9 and a half years old, he asked, if God can do anything,  
10 why didn't he do that my parents will not be killed?  
11 And after -- well, not half a year ago, he wanted to  
12 show off to his friends that his father is also playing  
13 soccer, so he took the trophy that Yaron won in high  
14 school -- in elementary school, a trophy of soccer, and  
15 he brought it to show to his friends. He came back  
16 home and the trophy was broken. So Yishai says, wow,  
17 what should we do now? How we will -- we won't be able  
18 to return it to our parents when they come back. So  
19 Dvir says, mommy, when will be resurrection? They've  
20 been so long away, when are they going to come back?  
21 Anytime that they ask these questions, I answer. I  
22 don't have problems in answering, but I have problems  
23 in my heart. But I'm answering. I hope that when  
24 they'll be older, I'll still have the ability to answer  
25 harder questions.

1 Q. Do those kinds of questions come up a lot or are  
2 they infrequent?

3 A. Usually they live their life. Our life, you know  
4 -- they live like everybody else, but, when -- like  
5 when the trophy was broken, there was a problem. It  
6 has to be solved. So they discussed it, applying to  
7 the dead and to resurrection, or when he asked about if  
8 God can do anything. So he learn. I don't remember, I  
9 think I was telling him about the creation of the  
10 world, Genesis, the beginning of Genesis. I was  
11 telling him every night near bedtime. I'm telling them  
12 a piece from the Bible, a story. I'm sure that that is  
13 exactly what their father would have done. So I'm  
14 doing the same. And I believe that I taught them about  
15 genesis, so God can do anything, so why didn't he  
16 prevent the death of their parents.

17 Q. And do you have a sense as to what the -- what the  
18 biggest loss is for them? What loss do they suffer  
19 from not having their parents?

20 A. First, there are so many losses that I can start  
21 counting. Okay, first of all, that they don't have  
22 real identity. We are doing for them the best, but the  
23 best is not enough because we are not the real thing.  
24 We are substitutes, and there's no substitutes for the  
25 parents. As that is said beforehand that we are

1 telling them about their parents all the time, but  
2 they can believe us. They don't really know. So they  
3 don't have their parents. How do you pass on the  
4 parentage of a person you don't know? How do you make  
5 a person love somebody that you never experience his  
6 love? They don't have their parents, with all the big  
7 huge implication about it. And about us, okay, so  
8 we're trying to substitute for the parents, but then  
9 they don't have us as grandparents, and that's very --  
10 that's also very hard for them because we are the  
11 grandparents of our other grandchildren. And when they  
12 come in, it's a very complicated life. When my sons  
13 are coming in, they try to substitute for Yaron. They  
14 crawl around with the kids on the carpet. They wrestle  
15 with him. So Dvir starts crying. He's not used to  
16 that. I can't play with him. My husband, we don't  
17 play with him on the floor because of age problems. So  
18 I'm teaching them chess. So we're playing something  
19 else. But if I'm teaching them chess as a parent, I  
20 can't let them win as I would do if I was a grandmother  
21 only to them, because then they won't learn. So we  
22 have a lot of problems which we are trying to solve in  
23 the best way possible. But as I said, the best is not  
24 enough in this occasion because it's not the real  
25 thing.

1 MR. STRACHMAN: Thank you. Your Honor, we  
2 had one other witness, Doctor Alan Brenman. He is not  
3 here because I did not -- and he's local, and I'm  
4 wondering if it's possible on Monday sometime to  
5 schedule 45 minutes or a half-hour or so, to hear his  
6 testimony? And if Monday is not convenient, then some  
7 other time. That is our last witness, and since he's  
8 from the area, I did not push to have him testify right  
9 away.

10 THE COURT: Do we have time on Monday,  
11 Mrs. Saucier?

12 THE CLERK: Yes, your Honor, we do, from 2  
13 p.m. on.

14 THE COURT: Can you have him here for 2 p.m.  
15 on Monday?

16 MR. STRACHMAN: Yes, your Honor.

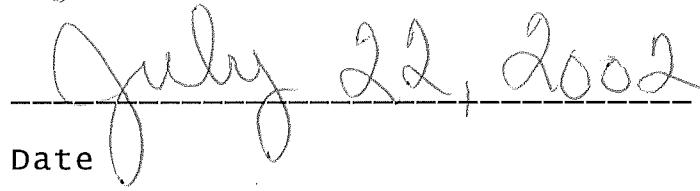
23 MR. STRACHMAN: No, your Honor. Thank you.

24 THE COURT: All right, the Court will stand  
25 in adjournment.

1  
2  
3 C E R T I F I C A T I O N  
4

5 I hereby certify that the foregoing is a correct  
6 transcript from the record of proceedings in the  
7 above-entitled matter.

8  
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11 JOSEPH A. FONTES

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